

DAO Policy Documents

Below you will find DAO policies implemented to achieve the Philadelphia District Attorney's Office criminal justice reform mandate and improve public safety. This section will be updated as needed.

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Philadelphia DAO New Policies**



Effective Date: 2/15/2018

These policies are an effort to end mass incarceration and bring balance back to sentencing. All policies are presumptive, not mandatory requirements. Where extraordinary circumstances suggest that an exception is appropriate, specific supervisory approval must be obtained. Wherever the term “supervisory approval” is used, it means that:

- (1) An Assistant District Attorney must obtain approval of the unit’s supervisor, and
- (2) The supervisor must then obtain approval from the District Attorney, or in his absence, the approval of First Assistant Carolyn Temin or Robert Listenbee
- (3) Bona fide verbal approvals and disapprovals are sufficient and must be noted in the case file, including the date of approval and identity of the requesting Assistant District Attorney and the supervisor who obtained approval or disapproval from the District Attorney.

DECLINE CERTAIN CHARGES

1. Do not charge possession of marijuana (cannabis) regardless of weight.
2. Do not charge any of the offenses relating to paraphernalia or buying from a person (BFP) where the drug involved is marijuana.
3. Do not charge prostitution cases against sex workers.
4. Do not charge or prosecute cases involving the possession of Buprenorphine.

CHARGE LOWER GRADATIONS FOR CERTAIN OFFENSES

Rationale: summary gradation greatly reduces pre-trial incarceration rates as no bail is required and the shorter time required for hearings expedites Municipal Court and Common Pleas dockets.

** These policies, which relate to various subjects, are included here together because they are the very first policies announced by District Attorney Larry Krasner within forty-five days after assuming office. They were a historic first step in the re-shaping of the Philadelphia Criminal Justice System.

1. Charge and dispose of Retail Theft cases as summary offenses unless the value of the item(s) stolen in a particular case exceeds \$500.00 or where the defendant has a very long history of theft and retail theft convictions.
2. You must seek supervisory approval to charge and dispose of retail theft cases at misdemeanor or felony levels.
3. Remember, that a summary conviction permits a sentence of 90 days incarceration, fines of up to \$250, and full restitution. These penalties are sufficient to hold a retail thief accountable.
4. In all cases, seek full restitution.

DIVERT MORE

All attorneys are directed to approach diversion and re-entry with greater flexibility and an eye toward achieving accountability and justice while avoiding convictions where appropriate. For example:

1. An otherwise law-abiding, responsible gun owner who is arrested because he does not have a permit to carry a firearm may apply for individualized consideration for diversion.
2. An otherwise law-abiding, first DUI (driving under the influence) defendant who has no driver's license (regardless of whether or not that defendant's immigration status interferes with obtaining a license under Pa. law) may apply for individualized consideration for diversion with a requirement of efforts to overcome license impediments where possible as an aspect of any diversionary program.
3. A defendant charged with marijuana (cannabis) delivery or PWID (Possession with the Intent to Deliver) may apply for diversion.

This is not a comprehensive list.

INCREASE PARTICIPATION IN RE-ENTRY PROGRAMS

In general, some effective re-entry programs have failed to attract more candidates due to rewards and incentives of the program that are minor compared with the major effort required of re-entering Philadelphians. Effective re-entry programs prevent crime and should apply to more re-entering Philadelphians. ADAs and staff involved in re-entry are directed to discuss and formulate suggestions to improve this situation by May 1, 2018.

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PLEA OFFERS

Note: This policy does not apply to Homicides, Violent Crimes, Sexual Assault Crimes, Felon in Possession of a Weapon (6105), and Economic Crimes with a loss of \$50,000 dollars or more or cases involving attacks on the integrity of the judicial process (e.g. false reports to police, perjury, obstruction of the administration of justice, witness intimidation, etc. All of these cases require supervisor approval as stated above.

1. Make plea offers below the bottom end of the mitigated range of the PA Sentencing Guidelines for most crimes.
2. Where an Individual ADA believes an offer below the bottom end of the mitigated range is too low due to specific factors, that ADA must seek supervisory approval of a higher offer.
3. Where the applicable sentencing guidelines range is between 0 and 24 months, ADAs should seek more house arrest, probationary, and alternative sentences in appropriate cases.

AT SENTENCING, STATE ON THE RECORD THE BENEFITS AND COSTS OF THE SENTENCE YOU ARE RECOMMENDING

The United States has the highest rate of incarceration in the world. It has increased 500% over a few decades. Pennsylvania and Philadelphia have been incarcerating at an even higher rate than comparable U.S. states and cities for decades--a 700% increase over the same few decades in Pennsylvania; and Philadelphia in recent years has been the most incarcerated of the 10 largest cities. Yet Pennsylvania and Philadelphia are not safer as a result, due to wasting resources in corrections rather than investing in other measures that reduce crime. Pennsylvania's and Philadelphia's over-incarceration have bankrupted investment in policing, public education, medical treatment of addiction, job training and economic development---which prevent crime more effectively than money invested in corrections. Over-incarceration also tears the fabric of defendants' familial and work relationships that tend to rehabilitate defendants who are open to rehabilitation and thereby prevent crime. As a result, a return to lower rates of incarceration for those defendants who do not require lengthy sentences is necessary in order to shift resources to crime prevention. Ultimately, the highest goal of sentencing must be to seek justice for society as a whole (the Commonwealth includes victims, witnesses, defendants, and those not directly involved in an individual case) while effectively preventing crimes in the future via methods that work. Each case, each defendant, and each sentence is unique and requires your careful consideration.

At sentencing, ADAs must state on the record their reasoning for requesting a particular sentence, and must state the unique benefits and costs of the sentence (e.g. consider where applicable the safety benefits, impact on victims, interruption of defendants' connections to family, employment, needed public benefits, and the actual financial cost of incarceration). In

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each case, place the financial cost of incarceration on the record as part of your explanation of the sentence recommended.

In talking about the financial cost to the taxpayer, use the following, arguably low, but much-repeated cost of:

\$42,000.00 per year to incarcerate one person (\$3,500 per month or \$115.00 per day).

The actual cost (including pension and other benefits to correctional employees, health care for incarcerated individuals, etc.) arguably is close to \$60,000.00 per year to incarcerate one person in the Philadelphia County prison system.

FACTS YOU SHOULD KNOW AND CONSIDER IN MAKING YOUR RECOMMENDATION

1. The actual cost (including pension and other benefits to correctional employees, health care for incarcerated individuals, etc.) arguably is close to \$60,000 now to incarcerate one person for a year in Philadelphia County prison system. (\$5,000 per month at \$164.00 per day).
2. As of March 1, 2022, Philadelphia County incarcerates approximately 4,600 people at any given time with a total annual cost of around \$360 Million per year.
3. The cost of one year of unnecessary incarceration (at \$42,000.00 - \$60,000.00) is in the range of the cost of one year's salary for a beginning teacher, police officer, fire fighter, social worker, Assistant District Attorney, or addiction counselor. You may use these comparisons on the record.
4. The average family's total income in Philadelphia in 2022 is approximately \$46,000.00---which paid their housing, food, utilities, transportation, clothing, educational expense and taxes.

EXAMPLES OF HOW THIS INFORMATION CAN BE USED AT SENTENCING

1. If you are seeking a sentence of 3 years incarceration, state on the record that the cost to the taxpayer will be \$126,000.00 (3 x \$42,000.00) if not more and explain why you believe that cost is justified.
2. In a very serious matter, where for example, 25 years incarceration are sought and is appropriate, state on the record that the cost to the taxpayer is \$1,050,000.00 (25 x \$42,000.00) if not more and explain why you believe that cost is justified.
3. When recommending a sentence of probation, compare the cost of incarceration to the cost of probation.

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Emphasize the positive rehabilitative factors of a probationary sentence such as permitting the defendant to continue working and paying taxes, permitting the continuation of family life, education and community inclusion.

REQUEST SHORTER PROBATION TAILS (I.E. CONSECUTIVE PERIOD OF PROBATION) OR NO PROBATION TAIL AFTER A SENTENCE OF INCARCERATION.

Criminological studies show that most violations of probation occur within the first 12 months. Assuming that a defendant is violation free for 12 months, any remaining probation is simply excess baggage requiring unnecessary expenditure of funds for supervision. Working with our justice partners and through the policies of this office, we have reduced the number of people on supervision in Philadelphia from 42000 in 2018 to fewer than 26000 in 2022. There is no reason to assume a probationary tail must be two years or more in every single case. Carefully evaluate what, if any, probationary tail is appropriate upon completion of a sentence of incarceration. For more information, please see the office policy on probation tails, which limits the length of probation for felonies to 3 years and misdemeanors to 1 year.

REQUEST SHORTER PROBATIONARY SENTENCES WHERE NO SENTENCE OF INCARCERATION IS SOUGHT.

Criminological studies confirm that longer probationary periods often result in more failures than shorter ones where those studies have controlled for offense and criminal record.

REQUEST NO MORE THAN A 6-MONTH VOP SENTENCE FOR A TECHNICAL VIOLATION WITHOUT SUPERVISORY APPROVAL

In many technical violation cases, no additional incarceration should be sought and no revocation is necessary. However, where the technical violation(s) calls for a more serious consequence, do not seek more than 30 to 60 days of incarceration unless you have approval from the District Attorney via your supervisor. For most technical violations, you should not recommend a custodial sentence.

SUPERVISORY REQUEST NO MORE THAN A 1-2 YEAR VOP SENTENCE FOR A DIRECT VIOLATION WITHOUT APPROVAL

Every direct violation presents the opportunity for two sentencings (one on the old matter and one on the new matter) that take into account the fact of the defendant's commission of a new crime while under supervision. Obviously, commission of a new crime while under supervision is a factor tending to increase the sentence on the new matter. Therefore, ordinarily it is not necessary to seek a sentence of longer than 1-2 years for a direct VOP. However,

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where special factors arise, you may seek approval from the District Attorney via your supervisor to seek a lengthier direct VOP sentence.

REQUEST THAT THERE BE NO VIOLATION OF PROBATION OR PAROLE DUE TO A POSITIVE DRUG TEST FOR USE OF MARIJUANA (CANNABIS) OR DUE TO POSSESSION OF CANNABIS WITHOUT SUPERVISORY APPROVAL

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PHILADELPHIA DISTRICT ATTORNEY'S OFFICE ANTI-HARASSMENT POLICY



Effective Date: December 2018

OBJECTIVE

The District Attorney's Office ("Office") is committed to providing a safe work environment for all of its employees, contract employees, interns, and volunteers, as well as those who come in contact with the Office (collectively, "employees"). The Office also will not tolerate discrimination or harassment, whether committed against employees or non-employees by visitors or others who interact with employees of this office to the extent that it affects the work environment or interferes with the performance of work functions.

To accomplish this objective, the Office adopts this policy to define sexual harassment and other forms of workplace harassment, prohibit it in all forms, to provide procedures for lodging complaints and investigating claims, and for the enforcement of appropriate disciplinary measures when violations occur.

The office will not engage in or tolerate unlawful discrimination (including any form of unlawful harassment or retaliation) on account of a person's sex/gender, pregnancy, age, race, color, religion, creed, sexual orientation, gender identity, gender expression, genetic information, marital status, familial status, civil union or domestic partner status, nationality or national origin, ancestry, citizenship, immigrant status, military status, veteran status, handicap, disability, medical condition, atypical hereditary cellular or blood trait, victim of domestic crime or stalking or membership in any "protected group" under federal, state or local law.

Under no circumstances will the Office tolerate behavior which creates an unacceptable working environment. Individuals found to have engaged in misconduct constituting sexual or other discriminatory harassment will be subject to discipline, up to and including discharge from employment.

SCOPE

This policy applies to all personnel performing work of any kind on behalf of the Office. All employees, including attorneys, staff, supervisors and managers, will be subject to discipline, up to and including discharge, for any violation of this policy. This policy also applies to nonemployees who come into contact with employees in this office – whether those individuals are reporting harassment or are suspected of engaging in harassment.

DEFINITIONS

Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward any person or group on the basis of gender, sexual orientation, gender identity, race, color, national origin, religion, age, disability, protected activity, or any other characteristic protected by law, and that:

- (i) has the purpose or effect of creating an intimidating, hostile, or offensive work environment or consists of quid pro quo harassment;
- (ii) has the purpose or effect of unreasonably interfering with an individual's work performance; or
- (iii) otherwise adversely affects an individual's employment opportunities.

Sexual Harassment is unwelcome conduct of a sexual nature that is sufficiently persistent or offensive such that it interferes with an employee's job performance or creates an intimidating, hostile, or offensive working environment. Sexual harassment is defined by the Equal Employment Opportunity Commission Guidelines as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (ii) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (iii) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment can be physical or psychological in nature. An aggregation of a series of incidents can constitute sexual harassment even if one of the incidents considered on its own would not. All Office employees are prohibited from harassing other employees, whether or not the incidents of harassment occur on Office premises and whether or not the incidents occur during working hours.

Examples of Prohibited Conduct

Though harassment encompasses a wide range of conduct, examples of prohibited conduct include the following:

- (i) Intentional, non-consensual physical contact that is, or could reasonably be construed as, sexual in nature;
- (ii) Unwelcome sexual advances, propositions, or other sexual comments, such as sexually oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience;
- (iii) Displays of sexually suggestive objects or pictures;

- (iv) Preferential treatment or promises of preferential treatment to an employee for submitting to sexual conduct, including soliciting, or attempting to solicit any employee to engage in sexual activity for compensation or reward;
- (v) Subjecting, or threatening to subject, an employee to unwelcome sexual attention or conduct or intentionally making performance of the employee's job more difficult because of that employee's sex;
- (vi) Sexual or discriminatory displays or publications anywhere in Office's workplace by Office employees; and
- (vii) Retaliation against anyone who has complained about, been a witness to, or resisted harassment or discrimination. Examples of retaliation include: arbitrary discipline, unwarranted change of work assignments, providing inaccurate work information, or failing to cooperate or discuss work-related matters, intentionally pressuring, falsely denying, lying about, or otherwise impeding investigations into prohibited conduct.
- (viii) Linking/conditioning any employment decision, benefits, etc. to a subordinate's submission or refusal to submit to sexual advances;
- (ix) Demanding or requesting sexual favors;
- (x) Requesting a date from someone after the recipient of the request has declined by saying "no" to a prior request;
- (xi) Providing preferential treatment to someone with whom the employee is having a romantic or sexual relationship;
- (xii) Sexually assaulting another individual;
- (xiii) Engaging in unwelcome and/or inappropriate physical contact, such as petting, pinching, or brushing against another person's body;
- (xiv) Engaging in sexual banter, jokes or teasing;
- (xv) Making gender biased or stereotypical comments, jokes or communications;
- (xvi) Stereotyping or offensive comments that denigrate or insult someone because of sexual orientation or gender identity, including misgendering a person, intentionally or consistently outing a person;
- (xvii) Making verbal commentaries about an individual's body, sexuality, or sexual orientation
- (xviii) Making disparaging, stereotyping, or other negative commentary about the pregnancy of another or pregnant co-workers generally;
- (xix) Using sexually degrading words to describe another individual or otherwise using slurs or inappropriate comments to describe their sexual or other protected status;

- (xx) Transmitting, showing or describing pornographic or other obscene materials or using DAO technology to transmit messages, jokes, photos, videos or other material that is sexual in nature, or accessing material that is sexual in nature in violation of the IT acceptable use policies and may be observed by others;
- (xxi) Engaging in verbal or nonverbal innuendo of a sexually suggestive nature;
- (xxii) Using obscene, hostile language of a sexually suggestive or otherwise biased nature.

OTHER FORMS OF HARASSMENT PROHIBITED

All forms of harassment listed above, as well as any harassment based on any characteristic protected by federal, state or local law if also a form of discrimination which can have a negative impact on the Office's work environment.

OTHER HARASSMENT DEFINED

For the purposes of this policy, other harassment is defined as verbal, visual or physical conduct that denigrates or shows hostility or aversion toward an individual based on his/her race, color, gender, gender identity, sexual orientation, religion, national origin, ancestry, age, disability, or any other characteristic protected by law, and that:

1. Has the purpose or effect of creating an intimidating, hostile, or offensive work environment; or
2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
3. Otherwise adversely affects an individual's employment opportunities.

Examples of Other Harassment include:

1. Use of epithets, slurs or other negative stereotypes;
2. Threatening, intimidating, or engaging in hostile acts that relate to a protected characteristic, including purported jokes/pranks;
3. Display of written or graphic material that denigrates or shows hostility or aversion toward a person or group because of a protected characteristic.

Retaliation

Retaliation against individuals lodging a complaint against this policy, in any form, is prohibited by this policy and may result in additional sanctions. Fear of retaliation should not be a barrier to reporting incidents of harassment. Retaliation in all forms is a serious violation of this policy and will not be tolerated. Any incidents of retaliation should be reported immediately. The reporting and investigation of allegations of retaliation will follow the procedures set forth in this policy. Any person found to have retaliated against an individual for reporting sexual or discriminatory harassment will be subject to the Office's disciplinary procedures.

The procedures available under this policy do not preempt or supersede any legal procedures or remedies otherwise available to a victim of sexual harassment under local, state, or federal law.

RECORDS

Records concerning reported harassment will be kept in a confidential investigative file, separate from personnel files.

RESPONDING TO HARASSMENT

The Office strongly encourages the prompt reporting of all incidents of sexual or other discriminatory harassment. The procedures for doing so are described below. Employees may report any of the above forms of workplace harassment and they will likewise be investigated according to the below procedures.

Any person who feels harassed or knows of harassment or suspected harassment, should report it to any supervisor, the Director of HR or a First Assistant.¹ Similarly, if you have any question as to whether certain conduct is unlawful discrimination, retaliation or harassment, you are encouraged to speak with any of the above listed individuals. Employees are not precluded from reporting harassment activity to federal, state and local agencies they wish to report to in addition to this Office.

Employees wishing to make an anonymous complaint may do so by emailing: DAOAntiHarassment@phila.gov. Anonymous complaints will be documented but not investigated.

All complaints made under this policy will be investigated promptly. The Office will take appropriate action based on the results of the investigation. Any employee found in violation of this policy will be subject to appropriate disciplinary action, up to and including termination of employment. Appropriate action will also be taken concerning nonemployees found in violation of this policy where possible.

If you are not entirely satisfied with how your complaint has been handled, you may appeal your complaint to the First Assistant District Attorney, or HR Director and are encouraged to do so as soon as possible. Employees also are encouraged to report ongoing or new conduct or possible retaliation that occurs in addition to any conduct already being investigated or for which an investigation has concluded.

QUESTIONS REGARDING POLICY

Any questions concerning this Policy should be directed to the Director of Human Resources.

¹ *When an employee feels that he or she has experienced sexual harassment, but chooses not to report it, his or her legal rights may be affected by that decision under certain circumstances.

Philadelphia DAO Policy on Bail



Effective Date: 2/21/2018

Effective February 21, 2018, the District Attorney will ordinarily no longer ask for cash bail for the following misdemeanors and felonies. All representatives of the District Attorney will be expected to abide by this presumption. Where justice requires, there is discretion to go against this presumption.

The cash bail system is rife with injustice and exacerbates socio-economic and racial inequalities, disproportionately penalizing the poor and people of color. The reforms laid out below represent a decisive step toward ending the use of cash bail and making the pretrial system more just.

All representatives of the District Attorney should presume that they will no longer seek cash bail on the following charges:

35-780-113-A16	Intentional Possession of a Controlled Substance
75-3802	DUI
18-3929	Retail Theft
35-780-113-A19	Unlawful Purchase of a Controlled Substance (BFP)
35-780-113-A31	Possession of Marijuana
18-3921	Theft by Unlawful Taking (not graded as F2)
18-5902	Prostitution
18-3925	Receiving Stolen Property (not graded as F2)
18-3304	Criminal Mischief
184101	Forgery
18-3502	Burglary F2- Not for Overnight Accommodation, No Person Present
18-3503	Trespass (non-residential)
18-3934	Theft from Motor Vehicle (not graded as F2)
18-3922	Theft by Deception or False Impression
18-5104	Resisting Arrest
18-3928	Unauthorized Use of a Motor Vehicle
35-780-113-A32	Paraphernalia
18-5123	Contraband
18-4914	Providing False Identification to Law Enforcement
62-62- 481	Fraud in Obtaining Foodstamps/Public Assistance
18-4120-	Identity Theft
18-4119	Trademark Counterfeiting
18-4106	Access Device Fraud
35-780-113-A30	PWID-Marijuana (51bs or under)

Special Conditions for PWID Cases (Other than Marijuana)

Where a defendant is charged with possession with the intent to deliver a substance other than marijuana, the presumption against monetary bail applies, except in any of the following circumstances:

- The weight of drugs possessed is greater than:
 - Heroin: 2.5g
 - Cocaine/Crack: 5g
 - Methamphetamine/PCP/Amphetamine: 12.5g
 - Other schedule 1/11 narcotic: 5g
- There is evidence of the presence of fentanyl
- The defendant has received two or more bench warrants in the past five years
- The defendant has one or more open cases of:
 - PWID
 - A violent felony or
 - VUFA/PIC (gun)
- A defendant has finished serving a sentence for:
 - PWID in the last 2 years
 - A violent felony in the past 5 years
 - VUFA or PIC (gun) in the past 5 years

Discretion:

In the above cases where the presumption applies, representatives of the District Attorney should generally recommend R.O.R.

While a presumption against cash bail applies in the above cases, representatives will continue to have discretion to ask for monetary bail where justice requires. For example, cases where a defendant is charged with a string of crimes, such as burglaries or thefts, or who have multiple DUIS in a short period of time, may be given cash bail despite the presumption against it. A significant history of recent flight may also suggest detention.

For all cases not subject to the above policy, representatives of the District Attorney should continue to evaluate bail requests on a case by case basis.

This policy will also apply to bail reduction motions in preliminary hearing and trial rooms, and in Motions Court.

Philadelphia DAO Policy on Buprenorphine/ Suboxone Possession Arrests and/or Pending Cases



Effective Date: 1/28/2020

Like nearly all other policies, it creates a presumption for all DAO staff to follow. Acting contrary to this presumption requires approval of the District Attorney or a First Assistant District Attorney. Any staff member who believes there is good reason in a particular case to act contrary to the presumption is welcome to seek their approval after advising their supervisor.

Prosecution

For all pending cases in which mere possession of medications that contain Buprenorphine (e.g. Suboxone) is charged, that charge shall be withdrawn no later than the next court listing. If the case involves no other charge, the entire case should be withdrawn. If the case involves other charges, proceed on the other charges. This office will continue to prosecute Possession with the Intent to Deliver Buprenorphine and/or Delivery of Buprenorphine at this time.

Charging

Charging shall be done consistently with the above policy---mere possession of medications containing buprenorphine shall be declined for charging.

This policy is consistent with other, thoughtful jurisdictions' efforts to prevent fatal overdoses and to reduce harm from America's opioid crisis. Buprenorphine based medications are primarily used to treat opioid substance abuse. Thank you for your hard work and cooperation.

Philadelphia DAO Policy on Cannabis DUI



Effective Date: 12/3/2018

An ADA may assume that a defendant whose blood tests positive for 5 ng/mls of psycho-active THC (Delta-9-THC) was driving while impaired. An ADA may not proceed on a case where a defendant's blood only contains inactive metabolite (11-Nor-9-Carboxy-Delta-9-THC) or 4 or fewer ng/mls of psycho-active THC.

Chronic users of cannabis or individuals with high BMIs will have inflated levels of psycho-active THC in their blood, because of the way the compound is stored in the fat cells in the body. Therefore, if the defense presents evidence that calls impairment into question, an ADA may consider dropping the charges against the defendant. In such cases, an ADA should consider the following factors, in this order:

- a. The level of psycho-active THC found in the blood
- b. Any evidence or scientific reports submitted by the defendant
- c. Whether or not the defendant drove in an unsafe manner
- d. The observations of the police officers

Where a defendant's blood shows the presence of 4 ng/ml of psycho-active THC or less and a blood alcohol level of .08 or more, a defendant should be charged under 75 Pa. C.S.A. § 3802(a) only.

Where a defendant's blood shows the presence of 4 ng/ml of psycho-active THC or less and a blood alcohol level of .07 or less, the ADA should analyze the case, and consider whether there is credible evidence of unsafe driving and/or police observation of impairment. Where an ADA believes that the defendant was in fact impaired at the time he was stopped, he or she may use his or her discretion and proceed either under 75 Pa. C.S.A. § 3802(a) or under 75 Pa. C.S.A. § 3802(d).

Where a defendant's blood test reveals the presence of psycho-active THC and another illegal drug, a defendant may be prosecuted under 75 Pa. C.S.A. § 3802(d).

Philadelphia DAO Conflicts Policy



Effective Date: March 2018

The DAO recognizes that, from time to time, attorneys have been hired and will continue to be hired who have previously been involved in various capacities in handling Criminal matters. The DAO also recognizes that current case law and the Canons of Professional Responsibility are somewhat imprecise in defining conflicts as relates to prosecutors and, therefore, we have devised a Screening Procedure whose goal is to avoid any impropriety or appearance of impropriety while, at the same time, retaining as many cases as possible and avoiding the indiscriminate transfer of cases to the AG or the Federal authorities.

THE POLICY

This Policy shall apply to any case where a member off the DAO staff is involved in a Criminal case wherein:

- Any staff member has previously represented the defendant or a witness;
- Any staff member is an eyewitness to the crime charged;
- Any staff member is the Complainant;
- Any staff member is a close relative of a party or witness;
- A staff member was a Judge who presided over any stage of the proceedings of a case that is on Appeal or Collateral Attack or is up for consideration of Parole, Probation or Commutation;
- This list is not exhaustive. There are other potential conflict scenarios that might require application of the Conflict Protocol. If in doubt, please consult with the Senior Advisor.

THE PROTOCOL

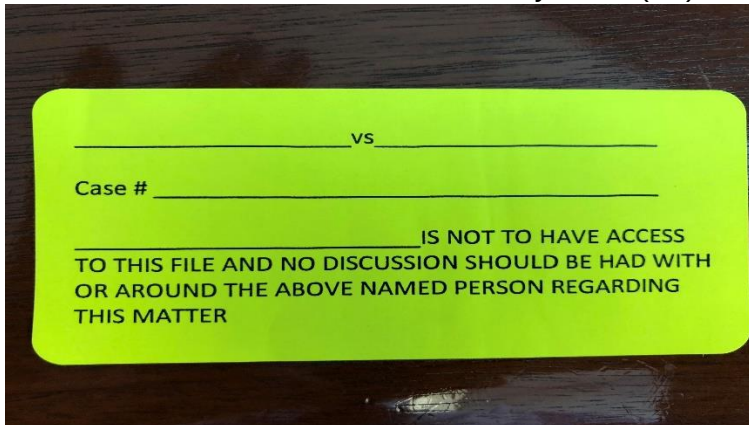
When a staff member becomes aware of the existence of any of the above scenarios, the staff member shall contact the Senior Advisor who will determine, on an ad hoc basis, if the conflict requires referral to another Agency or only screening of the employee. If the Senior Advisor is unavailable, a First Assistant shall make that decision. If referral is required, the First Assistant shall make the necessary arrangements. A formal referral letter will be sent. The First Assistant shall keep a copy of all referral letters and an Agency's acceptance letters in a secure place. In a case where only the screening of the employee is necessary, refer to the procedures below:

SCREENING PROCEDURE

The definition of screening is set out in Model Rule of Professional Conduct 1.0 (k):

“The isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances (emphasis mine) to protect information that the isolated lawyer is obligated to protect under these Rules or other law.”

- the personally disqualified lawyer (conflicted lawyer or CL) should be informed of the obligation not to communicate with any of the other lawyers in the DAO with respect to the matter at issue
- other lawyers in the DAO who are working on the matter (assigned lawyer(s) and their supervisors) should be informed that the screening is in place and that they may not communicate with the CL with respect to the matter at issue
- to implement and reinforce the presence of the screening, it may be appropriate in certain instances, to require a written undertaking by the screened lawyer (CL) to avoid any communication with other DAO personnel and any contact with any DAO files or other information relating to the matter at issue
- denial of access by the screened lawyer to DAO files or other information, including information in electronic form, (including but not limited to DAO electronic databases- PARS, PIINS, DAOCMS, eDiscovery [Document Management System], shared network drive, CPCMS) relating to the matter at issue
- placement of a highly visible sticker on each file involving a conflict with information on the file name, file number, and the identity of the (CL) conflicted lawyer



- all communications by and between DAO lawyers on conflicts should be copied to the Senior Advisor.

Philadelphia DAO Policy on Expungement and Refile



Effective Date: 5/2/2018

The following statements of policy are presumptions, not absolutes. If an ADA wishes to deviate from these presumptions, he or she must seek permission from the DA, via a First Assistant.

Pennsylvania law allows expungements and redactions of a defendant's criminal history in a very limited set of circumstances.¹ The guiding statute is 18 Pa.C.S. § 9122. The seminal case on expungements in this jurisdiction is *Commonwealth v. Wexler*, 494 Pa 325 (1981), which lays out the balancing test the Court must use in considering a petition for expungement. In light of this, state law, and city ordinances prohibiting the use of non-conviction data and summary convictions for seeking employment, professional, and occupational licenses, the DAO will only oppose motions for redactions or expungements in limited circumstances.

A. The DAO Will Agree to Expunge All Acquittals, Summary Convictions and Diversionary Dispositions

1. The DAO will agree to the expungement of cases or charges where the defendant has been found not guilty or where the Court has granted a motion for judgement of acquittal.² Under the law, there can be no exceptions to this rule.
2. The DAO will agree to the expungement of summary offenses if the law allows for their expungement.
3. The DAO will agree to the expungement of a case after a defendant has successfully completed a diversion program.³

B. The DAO Will Seek Expungement When A Defendant Has Been Wrongly Accused

4. In cases where the assigned ADA believes that the charges against a defendant were unfounded, or that the defendant is most likely innocent, the ADA should bring the

¹ Expungement is the process by which the record of a defendant's arrest or, in very limited cases, conviction, is purged from the public record. Redaction is the process by which the record of certain non-conviction data is purged from the record, even as other data from the same arrest may remain.

² See, *Commonwealth v. D.M.* 548 Pa 131 (1997)(an acquitted defendant is automatically entitled to expungement of his arrest record).

³ *Commonwealth v. Armstrong*, 495 Pa. 506 (1981)(holding that unless Commonwealth can demonstrate overriding societal interest in maintain arrest record, a defendant is entitled to have ARD record expunged).

file to the pretrial supervisor, who will consult with the District Attorney or First Assistant.

C. The DAO Will Not Oppose Expungement In the Following Circumstances

5. The mere fact that a defendant is in custody is not grounds to oppose a motion for expungement or redaction.⁴
6. The DAO will not object to a motion for expungement or redaction simply because the defendant has made a similar motion in the past and been denied. The elements of the test laid out in *Commonwealth v. Wexler, supra*, allows for a change in circumstance with the passage of time, and therefore such an objection is improper.
7. The DAO will agree to expungements and redactions even if a defendant has failed to pay all of his fines and costs, absent strong proof that the defendant is able to pay and is refusing to do so. The ADA assigned to the case should note for the record that the office does not oppose such a request, even if the Court system refuses to complete the expungement.

D. The DAO Will Agree to the Expungement of Dismissed and Nolle Prossed Cases and Charges, With Limited Exceptions

8. With the exception of cases or charges involving sexual or domestic violence⁵, the DAO will agree to the redaction of other charges where the defendant has pled to a lesser offense as part of a negotiation agreed to by this office. For example, where a defendant has been charged with aggravated assault, but has pled guilty to simple assault and, in return, the DAO has agreed to dismiss the lead charge, an ADA should not oppose redaction of the non-conviction data.
9. The DAO will agree to the expungement of all non-conviction data (e.g., cases or charges that have been dismissed or where the DAO has nolle prossed) where the case or charge **does not** involve an allegation of domestic violence or sexual assault. There is one exception: the trial division will keep a list of cases that have been held for court and later nolle prossed, where the office is likely to seek to lift the nolle prosee. If a defendant is seeking expungement of these cases or charges and less

⁴ While the law allows a Court to deny an expungement petition simply because a defendant is in custody on another matter, *see Commonwealth v. Wallace*, 45 A.3d 446 (Pa 2014), it is the position of this office that an individual's custody status alone should not determine whether or not he is entitled to have his record expunged on a matter unrelated to his confinement.

⁵ For a discussion of how to proceed in a case involving sexual or domestic violence, see paragraph 10.

than six months have elapsed since disposition, the assigned ADA must consult that list and should oppose expungement where the defendant's name appears on the list.

10. In all cases where a defendant is seeking to expunge cases or charges where he was accused of domestic or sexual violence, the assigned ADA must make a case-by-case determination as to whether expungement is appropriate, using the following balancing test:
 - a. The collateral consequences to the defendant of objecting to the expungement;⁶
 - b. The length of time that has elapsed since the defendant's arrest for the offense which the defendant wishes to have expunged or redacted;
 - c. The facts and the strength of the evidence in the underlying charges that the defendant is seeking to have expunged or redacted,
 - d. The defendant's criminal history prior to, and after, his arrest in the case he wishes to have expunged or redacted.⁷
11. In any case involving a homicide or alleged homicide, the supervisor of the homicide unit and the DA, via the First Assistant, should be consulted.

E. Refiling Procedure

12. If an ADA believes that a case should be refiled or the defendant should be rearrested, he or she must seek permission from a First Assistant or the District Attorney within two business days of the time that the case has been discharged or withdrawn. Only the District Attorney or a First Assistant can grant permission to refile.

⁶ The ABA provides a list of searchable consequences: <https://niccc.csjusticecenter.org/search/?jurisdiction=41> For permitted uses of criminal records by state agencies and employers, *See*, 18 Pa CS § 9124.

⁷ An assigned ADA should attempt to assess whether or not the alleged conduct that the defendant is seeking to expunge is indicative of a pattern of similar abuse, and whether expungement or redaction would hide that pattern.

Philadelphia DAO Policy on Avoiding Unjust Immigration Outcomes



Effective Date: 11/27/2018

It is essential that immigrants participate—as victims, witnesses and defendants—in the criminal justice system, in order to ensure the safety of our communities and residents, including both citizens and noncitizens. Creating barriers to participation in the criminal justice system due to the harsh deportation policies carried out by the federal government creates vulnerability in our communities where immigrants can be preyed upon with impunity by criminals and is completely unacceptable.

Where disproportionate immigration consequences may result from a criminal conviction and/or sentence, the case will be reviewed by immigration counsel to see what, if any, changes could be made to neutralize or reduce those consequences.

Deportation following a criminal conviction has significant and often devastating impacts on the emotional and financial well-being of innocent community members, including victims of crimes. Such impacts can include separation of families; significantly increased risks of involvement of children in criminal behavior; victims left without marital or child support; and families facing economic crises (common financial repercussions of deportation include food instability, loss of housing, and greater reliance on government assistance programs).

This office accepts the guidance offered by the Supreme Court of the United States in *Padilla v. Kentucky*, which held that adverse immigration consequences, especially deportation, are an *additional* punishment – not shared by a citizen defendant – which often inexorably follows from a conviction and sentence. As such, immigration consequences are so intimately tied to the criminal process that they are “uniquely difficult to classify as either a direct or a collateral consequence.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010).

A citizen and noncitizen – each with the same culpability – can be convicted of the same crime and receive the same sentence. The citizen will walk out of jail and return to his family, while the noncitizen, even with a valid visa or permanent resident status, can face the serious and long lasting additional penalty of deportation and/or other immigration related consequences (these can include: mandatory detention; inability to travel internationally; or preclusion from future immigration benefits such as applying for a green card or U.S. citizenship).

Due to the close relationship between criminal convictions and immigration consequences, and the severity of these consequences, this office further accepts the U.S. Supreme Courts’

statement that “informed consideration of possible [immigration consequences] can only benefit both the State and noncitizen defendants during the [trial process],” and that, “by bringing deportation consequences into this process, the defense and prosecution may well be able to reach [resolutions] that better satisfy the interest of both parties” *Padilla v. Kentucky* at 373. Considering alternative plea offers or sentencing recommendations serves the prosecution by avoiding unjust outcomes, which are most likely to arise when the charged offense and corresponding sentence are less serious and are disproportionate to the immigration risks. Therefore, this office believes that, to the extent possible, alternative dispositions which are immigration neutral can and should be considered in all appropriate cases.

THE POLICY

1. If you become aware that a defendant is not a U.S. citizen, through notification by the defense, information in the file, or by some other means, you must contact the District Attorney’s Immigration Counsel.
2. **DO NOT** inquire directly of a defendant about a defendant’s immigration status.
3. **DO NOT** disclose a defendant’s status to anyone outside the office, including witnesses or victims.
4. **DO NOT, under any circumstances,** contact or communicate with ICE (Immigration and Customs Enforcement). If ICE is able to reach you, state that you are not authorized to speak to them and refer them to Immigration Counsel.
5. All contact with ICE must be discussed with and authorized by Immigration Counsel first, with final approval from the District Attorney.
6. Where an immigration consequence has been detected at the pre-trial stage, Immigration Counsel will advise what offer or offers can be made that will avoid the immigration consequence. If trial counsel disagrees with the advice of Immigration Counsel, the Unit Supervisor must be consulted. If the Unit Supervisor disagrees with Immigration Counsel, the District Attorney must be consulted and will make the final determination.
7. If the offer is refused and the case proceeds to trial, Immigration Counsel must be consulted to determine if a sentencing recommendation can be made that will avoid the immigration consequence. If the trial attorney disagrees with Immigration Counsel, the matter must be discussed, as indicated above, with the Unit Supervisor and, if necessary, with the District Attorney.
8. After Immigration Counsel’s initial review, if changes in the case warrant a change in the offer or sentence recommendation (either lower or higher as evidence comes

together or does not), or if defense presents additional information, such as a mitigation packet or immigration memo, relating to why the offer or sentence recommendation should be altered, Immigration Counsel must be notified to determine whether additional changes are warranted.

PRESUMPTIONS

PLEASE NOTE: *You must notify Immigration Counsel, regardless of the presumption. Cases will be reviewed on a case-by-case basis. However, the following presumptions will guide the decision. The presumptions, which are based upon detailed input from the relevant units, are as follows:*

MC Cases

There are no presumptions for MC cases and each will be reviewed on a case-by-case basis.

Felony Cases

In general, offers for cases that include felony charges will not be evaluated or considered until after the preliminary hearing. For cases that should be considered prior to the preliminary hearing, they will be considered through the Pretrial Unit. Any offer will be conveyed by the Pretrial Unit supervisor and shared with the MC Unit supervisors as well.

Cases where there is a presumption that an immigration neutral solution will not be sought

- Crimes perpetuated by adults against minors
- Crimes where the offer includes SORNA registration
- Crimes involving human trafficking
- Most crimes involving child pornography
- Most DV cases where the initial offer remains a felony
- Shootings
- F1 and F2 Robbery
- Cases involving the use of a deadly weapon
- Cases involving serious bodily injury
- VUFA with a record of violence or prior gun possession/use
- Homicides

Diversion

In general, there will be a presumption that offers will be modified to take into account immigration consequences. However, in the following cases, there is a presumption the offer will not change:

- VUFA
- Robbery with a gun
- Defendants with disqualifying prior convictions (in line with existing diversion policies)

Family Violence and Sexual Assault

In general, there will be no presumption and cases will be looked at on a case-by-case basis. In cases where a misdemeanor is the only charge, immigration neutral changes are more likely.

CONCLUSION

In all cases, in order to arrive at the appropriate charge or disposition, for a criminal case, prosecutors routinely review and consider all relevant factors relating to the crime itself as well as all relevant factors relating to the defendant. In some cases, the factors relating to the defendant include adverse consequences that the defendant will suffer as a result of the conviction in addition to the direct consequences of the conviction. Immigration consequences often have a greater adverse impact on a defendant than the conviction alone. Most often, when considering immigration consequences, the immigration considered offer or sentencing recommendation will be commensurate with the original offer or recommendation and carry a commensurate penalty, but in some cases the offense and penalty may be greater or lesser as required for immigration consequences and our pursuit of justice.

Philadelphia DAO Policy on Accelerated Misdemeanor Program (AMP) Expansion



Effective Date: 2/4/2019

The District Attorney's Office of Philadelphia is increasing access to diversion, beginning with the Accelerated Misdemeanor Program (AMP) expansion policy. The Charging, Diversion and MC units have been trained and will effectuate these policies beginning Monday February 4, 2019.

Previously, AMP unfairly limited the benefits of diversion due to strict eligibility requirements. Given the successful outcomes of the AMP program, access should not be limited, and diversion into AMP should be extended to more people by lowering eligibility barriers. Society's expectation of the criminal justice system is moving away from incarceration towards restorative justice models, thereby demanding an end to our reliance on strictly punitive measures. Additionally, society has recognized how the criminal justice system has disproportionately impacted communities of color.

The goal of this policy is to increase the number of people eligible for diversion, and to remove disqualifying criteria that prohibit equity. This goal promotes fairness, individual justice, and appropriate responses to unlawful behavior. The policy is a subset of AMP's eligibility criteria. If you have questions regarding AMP's eligibility criteria or the application of this policy, please contact the Supervisor of the Diversion Unit.

New AMP Policy: Removing Barriers to AMP Entry

The following AMP Expansion Policy contains presumptions applicable to all AMP cases. An Assistant District Attorney (ADA) may depart from these presumptions if he or she has good cause to do so and has consulted with a supervisor.

1. If a defendant owes less than \$500 of restitution, restitution shall not be a barrier to entry into AMP. If more than \$500 is owed, an ADA may use his or her discretion in admitting a defendant.**
2. A defendant is excluded if s/he was in possession of an illegal or unlicensed gun at the time of arrest.
3. A defendant will not be excluded for previously declining an AMP offer.
4. A defendant will not automatically be excluded for previously failing to complete AMP, but ADAs may use discretion where they believe a defendant who previously failed AMP is inappropriate for re-admittance.**
5. Prior successful completion of AMP 2 will not be considered when assessing program eligibility.
6. A defendant will not be excluded if s/he has several violent arrests within the last 10 years that did not result in a conviction.
7. A defendant will not be excluded if s/he has a prior finding of “not guilty” on a homicide.
8. A defendant will not be excluded if s/he is a Gunstat Offender.¹
9. A defendant will not be excluded from AMP I for prior Accelerated Rehabilitation Disposition (ARD) or AMP I diversion, provided 5 years have passed since the date of the crime. Otherwise, a defendant is eligible for AMP 2.
10. A defendant will not be excluded from AMP I for entering a prior nolo plea provided 5 years have passed since the date of the crime. Otherwise, a defendant is eligible for AMP 2.
11. Prior juvenile adjudications will not be considered when assessing AMP eligibility.
12. A defendant is not excluded from AMP 2 for a prior misdemeanor conviction within the past year.

¹ Gunstat is no longer utilized by this administration

** Discretion against these presumptions will be reviewed quarterly

Philadelphia DAO Policy Relating to The Clean Slate Act



Effective Date: 6/27/2019

I. Background

For several years, Pennsylvania has allowed sealing of minor, old conviction records. Sealed records are available to law enforcement and criminal justice stakeholders but not to the general public.

Beginning on June 28, 2019, sealing will be expanded to include all misdemeanors where the defendant has been conviction free for ten years, except for select M1s. Sealing will also be expanded to all non-conviction charges. These changes will be retroactive, so older non-convictions will be sealed in addition to newer ones. Because of the sheer number of cases that will be sealed (more than 31M statewide), it will take the courts about a year to catch up and seal all eligible cases.

In recognition of the new law and spirit behind it, the DAO has developed a policy regarding the use non-conviction charge information and older misdemeanor convictions where the defendant has remained conviction free for a period of 10 years.

The following policies are presumptions. ADAs should consult with their supervisors if they wish to depart from these policies.

II. Rules on Use of Non-Conviction Data

The following rules govern when and how ADAs may use non-conviction charge information in subsequent, unrelated, prosecutions of a defendant.

An ADA may only use the existence of a prior charge that did not result in a conviction where the prior charge is reasonably related to the instant matter and is not excluded by any rule of evidence.

III. Rules on Use of Old Misdemeanor Convictions

The following rules govern when and how ADAs may use old misdemeanor conviction information in subsequent prosecutions of a defendant.

It is presumed that ADAs shall not consider misdemeanor convictions where the defendant has been free of misdemeanor and felony convictions for at least 10 years except:

- a. Misdemeanors of the first degree under Article B, involving danger to a person (18 Pa.C.S. §§ 2301-3299)
- b. Misdemeanors of the first degree under Article D, involving offenses against the family (18 Pa.C.S. §§ 4301-4399)

Such misdemeanor convictions not excluded in III(a) and (b) may only be used if reasonably related to the instant matter.

1. Prior Record Score: when calculating a prior record score, ADAs should consider all of the defendant's prior convictions. Since most 10-year-old misdemeanor convictions are viewed as so insignificant they are worthy of sealing, ADAs should use their discretion to make appropriate offers that discount the convictions described above, and explain their reasoning to the Court.
2. Diversion: such misdemeanor convictions should not be considered when determining a defendant's eligibility for diversion, except where the MOU governing the program requires it.
3. A Defendant's Criminal History Should Be Passed In Discovery: Defense attorneys who do not work for the Defender Association will not have access to those parts of their clients' records which have been sealed. Though the law does not require it, a copy of each defendant's secure court summary should be passed or uploaded to e-discovery prior to the disposition of a case.

Examples

A. Use of Non-Conviction Information (Part II)

1. The existence of a prior charge that did not result in a conviction could be used at a bail hearing, if the defendant failed to appear on the previous case.
2. The existence of a prior charge of domestic violence that did not lead to a conviction could be used in a later domestic violence case against the same defendant at the stage where bail is set or at sentencing.
3. The existence of a prior charge of domestic violence that did not lead to a conviction is not reasonably related to and should not be used in a current prosecution of a possession with the intent to distribute.

B. Use of Older Convictions (Part III)

1. A 12-year old conviction for M2 simple assault where the person has had no convictions in the past 10 years stemming from a domestic violence incident could reasonably be related to a later domestic violence case against the same defendant.
2. A 12-year old sealed conviction for simple assault stemming from a domestic violence incident is not reasonably related to and should not be used in a later prosecution for possession with the intent to distribute against the same defendant.

NEW PHILADELPHIA D.A.O POLICIES
ANNOUNCED MARCH 21, 2019 TO END MASS SUPERVISION
(THESE POLICIES AMPLIFY AND MODIFY SOME OF THE POLICIES
PREVIOUSLY ANNOUNCED FEBRUARY 15, 2018)

These new policies are a further effort to end mass supervision (which is a major driver of mass incarceration) and bring balance back to sentencing. All policies are presumptive, not mandatory requirements. Where extraordinary circumstances suggest that an exception is appropriate, specific supervisory approval must be obtained. Wherever the term “supervisory approval” is used, it means that:

- (1) An Assistant District Attorney must obtain approval of the unit’s supervisor and the unit’s supervisor must then obtain approval from the District Attorney, or in his absence, the approval of one First Assistant District Attorneys.
- (2) If an Assistant District Attorney’s request is disapproved by the unit’s supervisor, the Assistant District Attorney may, but is not required to request re-consideration of that decision by the District Attorney, or in his absence, one of the First District Attorneys. Any re-consideration shall be a discussion between the ADA, unit supervisor, and the District Attorney or in his absence one First Assistant District Attorney. Freedom of thought is encouraged in the Philadelphia DAO. No adverse consequence to the ADA will result from requesting reconsideration.
- (3) Bona fide verbal approvals and disapprovals are sufficient and must be noted in the case file, including all relevant dates and identities of all personnel involved.

**REQUEST SHORTER PERIODS OF TOTAL SUPERVISION
(ON PROBATION AND PAROLE)**

Mass supervision is a major driver of mass incarceration. Supervision comes in the form of parole (supervision after release from a sentence of incarceration), probation (supervision without a sentence of incarceration). Frequently in Pennsylvania a period of parole is followed by a consecutive period of probation (commonly known as a “probationary tail” or “tail”). Parole alone, probation alone, and parole plus a consecutive probation tail all result in a period of total supervision in the community.

Excessive supervision reduces public safety because it fails to prevent crime and arguably causes crime. While the first year of supervision shows real benefits in many cases, the second and third years show diminishing benefits. Some criminological studies have established that supervision for more than thirteen months is problematic. Another 2018 study by the Columbia University Justice Lab establishes that supervision for more than three years is not just

ineffective. It's harmful. It causes people under supervision to fail---to violate parole or probation, and often to return to jail.

In addition, mass supervision drives overwhelming caseloads for dedicated parole and probation officers, thereby diminishing their effectiveness in ways that reduce public safety. Excessive caseloads impede more focused efforts to supervise and rehabilitate those who are most in need of supervision.

Philadelphia's rate of supervision is truly extreme. While New York City (all 5 boroughs) currently has about 12,700 people under supervision on probation and parole, Philadelphia has nearly 40,000 people under supervision despite the fact that Philadelphia is about 1/5 or 1/6 the size of New York, essentially the size of just one of New York's boroughs.

Pennsylvania's mass supervision is no less extreme. Pennsylvania is the worst state in the United States for excessive periods of parole. It is the second worst state in the United States for excessive total supervision (the combination of parole and probation). This is due in part to Pennsylvania's statutory requirements on minimum and maximum sentencing, which are very different from many other states. In Pennsylvania, state law requires a sentence of incarceration that is followed by at least as much time on parole and permits far more time on total supervision. Pennsylvania's quirky sentencing law and the criminal justice culture that has adapted to it have made Pennsylvania an outlier, where supervision is routinely longer---often much longer---than any time served in jail. Most states allow sentences that require far less supervision after incarceration. Nearly all states supervise far less than Pennsylvania. Many states require no supervision at all after a sentence of incarceration.

Therefore, the following policies apply to all Assistant District Attorneys and staff:

- 1) In all cases, the appropriateness of a sentence of incarceration (if any) and how much incarceration is appropriate are to be determined first, consistent with all the DAO's policies, including those to end mass incarceration. Once that is determined, the following policies shall be used to determine supervisory aspects of the sentence.
- 2) In a **felony** matter, all negotiated guilty plea offers and sentencing recommendations shall do **individual justice to each case, but shall be aimed at an office-wide average period of total supervision among cases of around 18 months or less of total supervision, with a ceiling of 3 years of total supervision or less on each case**, except where total supervision is required to be longer by law. This means that for any felony sentence of 3 – 6 years or more, there will be no tail.
- 3) In a **misdemeanor** matter, all negotiated guilty plea offers and sentencing recommendations shall do **individual justice to each case, but shall be aimed at an office-wide average period of total supervision among cases of 6 months or less of total supervision, with a ceiling of 1 year of total supervision or less on each case**,

except where required to be longer by law. This means that for a misdemeanor sentence of 1-2 years or more, there will be no tail.

- 4) Negotiated plea offers and sentencing recommendations shall be for **concurrent sentences within a case and among consolidated cases**. Obviously, the plea offer and sentencing recommendation on a group of cases will reflect all consolidated cases.
- 5) Negotiated plea offers and sentencing recommendations in all cases that involve incarceration shall be for **a period of parole that is no longer than the period of incarceration**.
- 6) These policies apply to all forms of plea and to all recommendations at sentencing (e.g. negotiated and open pleas of guilty, nolo contendere, etc.), including post-trial sentencings and sentencings after open guilty pleas.
- 7) ADA's are to make recommendations in all VOP hearings on whether or not the court should find the defendant to be in violation and, if so, the consequence. For technical violations, do not recommend more than 30 – 60 days in custody; in most instances of technical violations, recommend no custody. For direct violations, do not seek more than 1-2 years in custody that are additional to the sentence for the new conviction that is the direct violation. Sentencings for the new crime that is the direct violation should reflect the fact that the new offense occurred while the defendant was under supervision and reflect this policy.

NOTE: Below are a few examples of felony and misdemeanor sentences that are in compliance and out of compliance with these policies:

A) FELONY SENTENCES

2-4 years incarceration plus 6 months probation tail.	COMPLIANT
2-4 years incarceration plus 2 years probation tail.	NON-COMPLIANT
1-3 years incarceration plus 1 year probation tail.	NON-COMPLIANT
5-10 years incarceration.	COMPLIANT
3 years probation.	COMPLIANT

B) MISDEMEANOR SENTENCES

2 years probation.	NON-COMPLIANT
11 ½ - 23 months incarceration plus 6 months probation.	NON-COMPLIANT
11 ½ - 23 months incarceration.	COMPLIANT
6 - 23 months' incarceration.	NON-COMPLIANT
6 - 12 months' incarceration plus 6 months probation.	COMPLIANT

Philadelphia DAO Policy on Fines and Costs



Effective Date: 6/27/2019

I. Support Waiving Fines and Costs When a Defendant is Indigent

All policies are presumptive, not mandatory, requirements. Where extraordinary circumstances suggest that an exception is appropriate, specific supervisory approval must be obtained. Wherever the term “supervisory approval” is used, it means that:

- 1) An Assistant District Attorney must obtain the approval of the unit's supervisor and the unit's supervisor must then obtain approval from the District Attorney, or in his absence, the approval of one of the First Assistants.
- 2) If an Assistant District Attorney's request is not approved by the unit's supervisor, the Assistant District Attorney may, but is not required to, request reconsideration of the decision by the District Attorney, or, in his absence, one of the First Assistants. Any reconsideration will be a discussion between the ADA, the unit supervisor and the District Attorney, or in his absence, one of the First Assistants. Freedom of thought is encouraged in the Philadelphia DAO. No adverse consequences to the ADA will result from requesting reconsideration.
- 3) Bona fide verbal approvals and disapprovals are sufficient and must be noted in the case file, including all relevant dates and identities of all personnel involved.

Imposing fines and costs on indigent individuals convicted of crimes needlessly and disproportionately punishes those individuals and their families and serves no public safety purpose. To the contrary, unaffordable fines and costs make it more difficult for individuals to complete probation terms, finish diversionary programs, and take advantage of expungement and sealing laws that would allow them to be more productive members of the community.

Furthermore, under our current system, when a defendant makes a payment, the money is divided among fines, costs, and restitution. In cases where restitution is awarded, it is most important that to insure quick compensation to the victim, what limited funds an individual may be able pay go towards restitution, rather than court administrative costs.

The DAO believes that the judiciary has the power to waive fines and costs under Pennsylvania

Rule of Criminal Procedure 706(c). This office intends to do our part to limit the extent to which the criminal justice system becomes a poverty trap, while ensuring that victims recover whatever money a defendant is able to pay.

II. Situations in Which the Defendant Should Be Presumed Indigent

- a.** ADAs shall presume that a defendant is indigent where any one of the following conditions apply:
 - i.** The defendant is represented by the public defender, has appointed counsel, pro bono counsel or is represented by any free legal services organization, or
 - ii.** The defendant receives means-based public assistance, or
 - iii.** The defendant provides evidence that his or her income is at or below 125% of the Federal Poverty Guidelines, or **iv.** The defendant otherwise can make a showing that s/he is indigent, by clear and convincing evidence.
- b.** Notwithstanding that the defendant has met one of the criteria listed in section II(a), if an ADA has reason to suspect the defendant of fraud or misrepresentation regarding the defendant's financial circumstances, the ADA may ask the defendant to provide additional evidence of his or her financial circumstances.

III. Presumptions Regarding Fines and Costs for Indigent Defendants

- a.** An ADA may not oppose an indigent defendant's request to the court to waive or reduce fines and costs, at either the sentencing phase or in any motion brought by the defendant after sentencing.
- b.** Where a probation or parole officer alleges a violation of probation or parole based upon an indigent defendant's failure to pay fines and costs, an ADA should not agree that a failure to pay represents a violation of probation or parole, absent evidence that the defendant's failure to pay is willful.
- c.** An ADA should never ask to extend probation based upon a defendant's failure to pay fines and costs.
- d.** No defendant shall be denied access to a diversion program because s/he cannot afford to pay fines or costs.
- e.** Indigent defendants who are admitted to diversionary programs cannot be expelled from or prevented from completing such programs simply because they are unable to pay fines or costs, provided they can show that they have attempted to pay these obligations.

IV. Restitution

- a.** The above policy concerns fines and costs only. Questions about waiving or reducing restitution should be handled on a case-by-case basis and ADAs should consult with their supervisors for guidance.

Philadelphia DAO Introduction to Juvenile Policies



Effective Date: January & July 2019

Rationale for Juvenile Policies

The juvenile justice system is failing our most vulnerable children. The policies set forth here seek to decrease the number of children sent to juvenile placement and limit the number of youth on supervision. By almost every metric, juvenile crime is down across the country and in Pennsylvania.ⁱ And yet, children who have been labeled delinquent for relatively minor offenses are often trapped in a system that fails to offer them the help they need, and then sends them away from their homes when they fail. It is time to shrink the footprint of the juvenile justice system.

The vast majority of children in the juvenile system have not committed serious violent crimes—those children are charged and (at least at first) prosecuted in adult court. The children that these policies seek to address are those who have committed misdemeanor or lesser felony offenses, and who are sent to placement or supervised for inordinate lengths of time for behavioral problems that do not require intervention from the juvenile justice system.

The statistics bear out this alarming truth: 72% of the children we send to juvenile placement are sent because they are not complying with their probation—not because they have committed another crime.ⁱⁱ Children come into the delinquent system because they have committed a delinquent act. They stay in the system, often for years, and are sent away from their homes for failing to go to school, failing to make their curfew and using marijuana. By placing children in facilities to address these behavioral problems, we have created a cure that is worse than the disease: research suggests that sending youth to placement not only fails to reduce recidivism but may actually increase the likelihood that youth will recidivate.ⁱⁱⁱ

Philadelphia County has the highest rate of juvenile placement of any jurisdiction in the state: our city accounts for a little more than 12% of the Pennsylvania population, but 28.3% of the children in placement live in Philadelphia. Our city sends 2.5 times the number of children to out-of-home placement as Allegheny County (the next most populated county) and five times as many as Delaware County (the third most populated county).^{iv}

The purpose of the juvenile justice system is to provide children who have been adjudicated delinquent with “supervision, care and rehabilitation . . . [and] to enable children to become responsible and productive members of the community.”^v Our system has strayed from this goal. Instead of caring for and educating our most vulnerable youth, the system punishes them, refusing to let go of them even when they pose no threat, even as it makes the circumstances of their lives worse.^{vi} In the latest study, conducted in 2013, only 36% of Philadelphia children who passed through the juvenile justice system graduated from high

school.^{vii} We are sending children to facilities of variable quality all over the state (and sometimes as far away as Tennessee and Virginia), where their educational needs often go unmet, at an alarming cost to the taxpayer. A child in public school in Philadelphia costs the government \$14,627 per year.^{viii} The average cost of juvenile placement per year in Pennsylvania is \$161,695 and the cost of secure confinement is as much as \$241,265.^{ix}

We cannot ignore the disparate impact that our policies are having on children of color in our communities: 73% of all children adjudicated delinquent in Philadelphia are African American and only 6% are Caucasian.^x 71.4% of all the children held in secure detention from Philadelphia are African American, while 5.6% are Caucasian and nearly 18% are Hispanic.^{xi} In Pennsylvania as a whole, African Americans make up 14% of the population, but they account for 48.2% of delinquent dispositions and nearly 38% of placements.^{xii}

Juvenile placements vary enormously in quality. Some are dangerous. We were reminded of this in the fall of 2016, when a 17-year-old housed at Wordsworth in West Philadelphia was killed when he was choked in an altercation with staff, and then again in August when a child at Glen Mills Schools, a placement for delinquent youth, was badly beaten by staff.^{xiii}

For too long the system has demanded that children be held accountable for their behavior, while the adults in positions of power fail to make sure that the programs we send them to are working for their benefit. It has become increasingly clear we do a disservice to children who are not dangerous to the community when we send them far away from their homes.

Other jurisdictions, including New York, have implemented Close to Home policies, which allow more kids to stay in their homes or, if they must be removed for community safety, to stay in the same school district or neighborhood. The results are impressive: high school graduation rates improve, rates of recidivism decrease and participant satisfaction rises.^{xiv} We encourage our system partners to embrace this model.

Children who are placed on juvenile probation are also being over-supervised. Even though evidence suggests that the number of conditions a child must abide by should be limited, children in Philadelphia are often compelled to comply with five, or six, or sometimes more conditions to be released from supervision.^{xv} The DAO is therefore committed never to ask for more than three conditions for any child placed on supervision.

Children who must be charged as adults are not addressed in these policies.^{xvi} This category of children stand accused of committing serious felonies where a deadly weapon was used. While these children must at first be charged in adult court, this office has the discretion to send many of these cases back to the juvenile system. In the last nine months, we have cut the number of children being tried in adult court by _____, and reduced the number of children being held in adult jail in half. We have done this carefully and thoughtfully, with an eye toward the safety of the community and the best interests of the child. We know now—and United States Supreme Court precedent acknowledges—that children cannot be held accountable in the same way that adults are because their brains have not fully developed.^{xvii} It is unjust and unnecessary to punish children for their actions in the same way we would adults. This office will continue to transfer children accused of serious crimes back to the juvenile system where it is appropriate and does not compromise public safety.

In every unit, the DAO is striving to create fairer, more thoughtful and more effective prosecutors. Juvenile ADAs are critical to this mission. We hope that these policies, and the trainings that will accompany them, can reshape not just this office, but the juvenile justice system in Philadelphia and beyond.

ⁱ See OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, UNITED STATES DEPARTMENT OF JUSTICE, STATISTICAL BRIEFING BOOK, *available at* <https://www.ojjdp.gov/ojstatbb/crime/JAR.asp>; and https://www.ojjdp.gov/ojstatbb/ezaucr/asp/ucr_display.asp

ⁱⁱ See JUVENILE COURTS' JUDGES COMM'N, 2016 PENNSYLVANIA JUVENILE COURT DISPOSITIONS 19 (2016), *available at* [https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2016%20Pennsylvania%20Juvenile%20Court%20Disposition%20Report%20\(PDF\).pdf](https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2016%20Pennsylvania%20Juvenile%20Court%20Disposition%20Report%20(PDF).pdf).

ⁱⁱⁱ See Jake Horowitz & Arna Carlock, *Nearly a Quarter of Confined Juveniles Nationwide Held for Noncriminal Infractions*, PEW TRUSTS (Feb. 14, 2018), <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/14/nearly-a-quarter-of-confined-juveniles-nationwide-held-for-noncriminal-infractions>.

^{iv} See JUVENILE COURTS' JUDGES COMM'N, 2016 PENNSYLVANIA JUVENILE COURT DISPOSITIONS 19 (2016), *available at* [https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2016%20Pennsylvania%20Juvenile%20Court%20Disposition%20Report%20\(PDF\).pdf](https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2016%20Pennsylvania%20Juvenile%20Court%20Disposition%20Report%20(PDF).pdf).

^v See 42 Pa.C.S. § 6301(b)(2).

^{vi} Philadelphia youth with a history of contact with either the delinquent or the dependent systems score substantially lower on standardized tests, have lower job promotion rates, higher rates of absenteeism and special education eligibility, and accumulate fewer educational credits compared to their peers who have no contact with the system. See Maura McInerney, Esq., Legal Director, Education Law Center, Testimony Before Philadelphia City Council: Education Interrupted: How We Are Failing Our Children in Residential Placements (May 17, 2018), *available at* <https://www.elc-pa.org/wp-content/uploads/2018/05/ELC-Testimony-Before-City-Council-Re-Residential-Placements-May-17-2018.pdf>; SOPHIA HWAN ET AL., CHOP POLICYLAB, SUPPORTING THE NEEDS OF STUDENTS INVOLVED IN THE FOSTER CARE AND JUVENILE JUSTICE SYSTEMS 5 (2014), *available at* http://policylab.chop.edu/sites/default/files/pdf/publications/PolicyLab_Report_Supporting_Students_Involved_with_Child_Welfare_June_2014.pdf.

^{vii} JULIA RANSOM ET AL., PROJECT UTURN, A PROMISE WORTH KEEPING: ADVANCING THE HIGH SCHOOL GRADUATION RATE IN PHILADELPHIA 12 (n.d.), *available at* <http://www.projectuturn.net/docs/PromiseWorthKeeping.pdf>; see also ARLEY STYER & EDUCATION LAW CENTER, STONELEIGH FOUNDATION, MOVING THE DIAL: A REPORT ON EDUCATION EXPERIENCES OF CHILDREN IN PENNSYLVANIA RESIDENTIAL TREATMENT FACILITIES 2 (2011), *available at*: https://www.elc-pa.org/wp-content/uploads/2013/08/access_Moving_the_Dial_Styer.pdf.

^{viii} See the National Center for Education Statistics, Philadelphia District Directory Information, (last visited Sept. 13, 2018), https://nces.ed.gov/ccd/districtsearch/district_detail.asp?Search=2&ID2=4218990.

^{ix} SELA COWGER ET AL., JUSTICE LAB AND YOUTH SENTENCING & REENTRY PROJECT, DOUBLE PUNISHMENT: PHILADELPHIA’S PRACTICE OF CHARGING PARENTS FOR THEIR CHILD’S INCARCERATION COSTS 24-25 (2016), *available at* <https://www2.law.temple.edu/csj/cms/wp-content/uploads/2016/11/Double-Punishment.pdf>.

^x See JUVENILE COURTS’ JUDGES COMM’N, 2016 PENNSYLVANIA JUVENILE COURT DISPOSITIONS 93 (2016), *available at* [https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2016%20Pennsylvania%20Juvenile%20Court%20Disposition%20Report%20\(PDF\).pdf](https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2016%20Pennsylvania%20Juvenile%20Court%20Disposition%20Report%20(PDF).pdf).

^{xi} *Id.* at 95.

^{xii} See JUVENILE COURTS’ JUDGES COMM’N, 2016 PENNSYLVANIA JUVENILE COURT DISPOSITIONS 28 (2016), *available at* [http://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2016%20Pennsylvania%20Juvenile%20Court%20Disposition%20Report%20\(PDF\).pdf](http://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2016%20Pennsylvania%20Juvenile%20Court%20Disposition%20Report%20(PDF).pdf).

^{xiii} See Nancy Phillips & Chris Palmer, Death of Teen at Wordsworth in Fight Over iPod Ruled Homicide, THE INQUIRER (Feb. 10, 2017), <http://www2.philly.com/philly/news/Death-of-teen-at-Wordsworth-was-homicide-Medical-Examiner-says.html>; Lisa Gartner, “I Can’t Breathe”: Probe Underway at Glen Mills After Staffer Attacks Boy, THE INQUIRER (Aug. 31, 2018), <http://www2.philly.com/philly/news/philadelphia-glen-mills-schools-juvenile-abuse-attack-20180831.html>. 40% of the youth held at Glen Mills are sent there from Philadelphia County.

^{xiv} Teresa Wiltz, Keeping Youth Close to Home Reduces Juvenile Arrests, PEW TRUSTS (Mar. 16, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/03/16/keeping-youth-close-to-home-reduces-juvenile-arrests>.

^{xv} Advocates for children, as well as the Philadelphia Juvenile Probation Department agree that more than three conditions can be counterproductive. Pennsylvania’s Juvenile Justice System Enhancement Strategy Report explains that a child should be assessed by measuring forty-two risk and need factors so that the assessor can identify the “top three criminogenic needs” of the

child and a Probation Officer can create a condition to meet each need. JUVENILE COURT JUDGES' COMM'N ET AL., PENNSYLVANIA'S JUVENILE JUSTICE SYSTEM ENHANCEMENT STRATEGY 20-21, 33 (2012), *available at* <https://www.pccd.pa.gov/Juvenile-Justice/Documents/JJSES%20Monograph%20Final%20version%20press%20ready%2005%2025%2012.pdf>. This is a best practice recognized in our system and beyond. See JUVENILE COURT JUDGES' COMM'N, PENNSYLVANIA JUVENILE DELINQUENCY BENCHBOOK § 9-7 (2008), *available at* <https://www.jcjc.pa.gov/Publications/Documents/Juvenile%20Delinquency%20Benchbook/Juvenile%20Delinquency%20Benchbook%20-%20Compilation.pdf> (recommending a limited and specific set of conditions for juveniles on probation).

^{xvi} See 42 Pa.C.S. § 6302(2).

^{xvii} See *Miller v. Alabama*, 567 U.S. 460, 472-73 (2012)

Policy #1
Juvenile Pre-Adjudicatory Offer Policy With Annotations
January 10, 2019

The following policies are presumptions. An ADA may depart from these presumptions if he or she has good cause to do so and has consulted with a supervisor.

1. An ADA should make an offer for a deferred adjudication in most cases.^{xviii} In the following cases, a deferred adjudication may not be appropriate:
 - a. Where the youth has a prior adjudication of delinquency;
 - b. Where the youth is charged with possessing a gun;
 - c. Where the youth is charged with an aggravated assault and has intentionally inflicted significant or serious bodily injury on the victim;
 - d. Where the youth is charged with rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault;
 - e. Where the youth is charged with a felony of the first degree where a weapon was used; or
 - f. Where the youth is charged with a delinquent act that involves the invasion of the home of another, and a weapon was used in the commission of the act.
2. In cases where a Reporting Consent Decree ("RCD") is inappropriate, an offer that includes the DAO's consent to expungement six months after the completion of probation should be considered.
3. All pretrial offers must be made available to defense counsel 48 hours before the pretrial listing of the case, so that defense counsel has the opportunity to review the discovery and discuss the offer with the child prior to the pretrial listing. Victims who have suffered a physical injury must also be notified of the offer prior to disposition and should be given an opportunity to address the Court, should they wish to do so.
4. Pre-adjudicatory hearing offers should remain open until forty-eight hours before the adjudicatory hearing listing, unless there is a significant change in the circumstances. An ADA may make the same offer on the day of the adjudicatory hearing if he or she believes it is appropriate and has discussed it with a supervisor.

ⁱ Where a youth has been found guilty of a delinquent act, the Court must hold a disposition hearing at which the Court will decide whether the child is “in need of treatment, rehabilitation or supervision.” 42 Pa.C.S. § 6341(b). If the Court makes this finding, a child is adjudicated delinquent. Where a child has been found guilty of a delinquent act, the Court may choose to delay such a finding, placing the child on “deferred” status to see if the child is able to take advantage of available services so that he or she need not be adjudicated delinquent. See JUVENILE COURT JUDGES’ COMM’N, PENNSYLVANIA JUVENILE DELINQUENCY BENCHBOOK § 8-6 n.35 (2008), *available at* <https://www.jcjc.pa.gov/Publications/Documents/Juvenile%20Delinquency%20Benchbook/Juvenile%20Delinquency%20Benchbook%20-%20Compilation.pdf>. The ADA may recommend deferring adjudication, to allow the child the opportunity to cooperate with Juvenile Probation, thereby avoiding an adjudication of delinquency.

Policy #2

Juvenile Reporting Consent Decree (“RCD”) Policy^{xix} With Annotations

January 17, 2019

The following policies are presumptions. An ADA may depart from these presumptions if he or she has good cause to do so and has consulted with a supervisor.

1. Reporting Consent Decrees (“RCDs”), a statutorily recognized form of juvenile diversion, shall be extended on cases where a misdemeanor is the lead charge and the child has no prior adjudications of delinquency or open cases. This does not apply to cases where the child is charged with possession of a gun, a serious sexual offense, or has a history of serious violence.^{xx} RCDs should also be offered to defendants charged with felonies, where appropriate.
2. RCDs should contain no more than three conditions. If the ADA offering the RCD thinks it appropriate, he or she may allow the Juvenile Probation Officer to set the conditions after the child has been evaluated using the Youth Level of Service/Case Management Inventory tool (“YLS”), which uses forty-two factors to identify the top three criminogenic needs of the youth.^{xxi} This test is often not completed at the time the offer is made, but may be the best guide as to the child’s needs. However, regardless of the results of the YLS, only three conditions can be placed on the child.
3. RCDs should not require drug testing unless some evidence exists that the child may be using illegal drugs. If testing is appropriate, drug testing should be one of no more than three conditions.^{xxii}
4. An ADA may not recommend that an RCD be revoked because a child is using marijuana. A child who uses marijuana may be referred to treatment services if the problem is repeated or the child’s guardian asks for treatment.^{xxiii}
5. Children on an RCD shall not be required to complete more than twenty-five hours of community service without approval of a supervisor.
6. Victims must be notified when the DAO offers a child an RCD.

ⁱ A Reporting Consent Decree, like the Accelerated Rehabilitative Disposition (“ARD”) program, is a statutorily recognized form of diversion. The Juvenile Act explains that “[a]t any time after the filing of a [juvenile] delinquency petition and before the entry of an adjudicatory order, the court may, on motion of the district attorney or of counsel for the child, suspend the proceedings, and continue the child under supervision in his own home, under terms and conditions negotiated with the probation services and agreed to by all parties” 42 Pa.C.S. § 6340(a). This order is known as a consent decree. In Philadelphia, the DAO may offer a child an RCD which will place him or her under court supervision for a minimum of six months and no more than a year. If he or she completes the terms of his or her supervision, the petition against him or her will be withdrawn, and may be expunged. See *id.* at § 6340(c), (e).

ⁱⁱ The statute places no limits on the types of cases that may be considered appropriate for an RCD and the DAO recognizes that even if a child has committed a serious delinquent act, he or she may not be in need of significant supervision by the juvenile justice system. See *generally id.*

ⁱⁱⁱ Advocates for children, as well as the Philadelphia Juvenile Probation Department agree that more than three conditions can be counterproductive. Pennsylvania’s Juvenile Justice System Enhancement Strategy Report explains that a child should be assessed by measuring forty-two risk and need factors so that the assessor can identify the “top three criminogenic needs” of the child and a Probation Officer can create a condition to meet each need. JUVENILE COURT JUDGES’ COMM’N ET AL., PENNSYLVANIA’S JUVENILE JUSTICE SYSTEM ENHANCEMENT STRATEGY 20-21, 33 (2012), *available at* <https://www.pccd.pa.gov/Juvenile-Justice/Documents/JJSES%20Monograph%20Final%20version%20press%20ready%2005%2025%2012.pdf>. This is a best practice recognized in our system and beyond. See JUVENILE COURT JUDGES’ COMM’N, PENNSYLVANIA JUVENILE DELINQUENCY BENCHBOOK § 9-7 (2008), *available at* <https://www.jcjc.pa.gov/Publications/Documents/Juvenile%20Delinquency%20Benchbook/Juvenile%20Delinquency%20Benchbook%20-%20Compilation.pdf> (recommending a limited and specific set of conditions for juveniles on probation).

^{iv} At the present time, the Juvenile Probation Department drug tests all youth when they begin their supervision on an RCD. ADAs should not recommend that a child’s RCD be terminated for the use of marijuana. Instead, a positive drug screen for marijuana is but one piece of information about a child that should be used in assessing the proper services a child may need.

^v Recent studies suggest that the impact of marijuana on the adolescent brain is not as significant as experts previously believed, although further study is necessary. While marijuana certainly produces short term cognitive impairment, the long-term impact that the drug has on the developing brain is less certain. See J. Cobb Scott et al., *Association of Cannabis With Cognitive Functioning in Adolescents and Young Adults: A Systematic Review of Meta-Analysis*, 75 JAMA PSYCHIATRY 585, Conclusions and Relevance (2018) (“Associations between cannabis use and cognitive functioning in cross-sectional studies of adolescents and young adults are small and may be of questionable clinical importance for most individuals. Furthermore, abstinence of longer than 72 hours diminishes cognitive deficits associated with cannabis use.”); Claudia Wallis, *What Pot Really Does to the Teen Brain*, SCIENTIFIC AMERICAN (Dec. 1, 2017), <https://www.scientificamerican.com/article/what-pot-really-does-to-the-teen-brain>.

Other recent studies suggest that people who use marijuana as adolescents, are not more prone to “cognitive decline” in adulthood. In other words, youth who consume marijuana are not necessarily permanently damaging their future mental capacity as we once believed. Brenden Tervo-Clemens et al., *Adolescent Cannabis Use and Brain Systems Supporting Adult Working Memory Encoding, Maintenance, and Retrieval* 169 NEUROIMAGE 496, 505 (2018). However, it is undisputed that marijuana has a detrimental impact on a young person’s concentration and cognition in the short term.

Lastly, recent studies suggest that ending the sanctions imposed for the use of marijuana is unlikely to increase its use. Christopher Ingraham, *Following Marijuana Legalization, Teen Drug Use is Down in Colorado*, WASHINGTON POST (Dec. 11, 2017), available at https://www.washingtonpost.com/news/wonk/wp/2017/12/11/following-marijuana-legalization-teen-drug-use-is-down-in-colorado/?utm_term=.1eaba6acf5d6 (recounting federal survey data that shows a statistically significant drop in teen marijuana usage in Colorado a year after its legalization (citing SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., NATIONAL SURVEY DATA ON DRUG USE AND HEALTH: COMPARISON OF 2014-2015 AND 2015-2016 POPULATION PERCENTAGES (2016), available at <https://www.samhsa.gov/data/sites/default/files/NSDUHsaeShortTermCHG2016/NSDUHsaeShortTermCHG2016.htm>)).

Policy # 3
Juvenile Detention Policy With Annotations
January 17, 2019

The following policies are presumptions. An ADA may depart from these presumptions if he or she has good cause to do so and has consulted with a supervisor.

1. An ADA should recommend an alternative to detention at the time of any new arrest with the following exceptions:^{xxiv}
 - i. The child is an immediate danger to his or her community or family;
 - ii. The parent refuses to take the child home^{xxv};
 - iii. The child is charged with possessing a gun; or
 - iv. The child has a history of violence and is accused of a new violent offense.^{xxvi}
2. At bench warrant hearings and violation of probation hearings, alternatives to a child being held in detention at the Philadelphia Juvenile Justice Services Center ("JJSC") must be considered, including the following:
 - a. An alternative relative that a juvenile might stay with;
 - b. In Home Detention ("IHD");^{xxvii}
 - c. Intensive Supervision Program ("ISP");^{xxviii}
 - d. GPS (where a child would otherwise be held);^{xxix} and
 - e. Evening Reporting Center coupled with GPS;^{xxx}
3. An ADA may recommend that a child be held if he or she has gone absent without leave from an out-of-home placement.^{xxxi}
4. Where a Hearing Officer^{xxxii} has denied a joint recommendation from the ADA and defense counsel that a child be released, an appeal should be taken to the on-call judge, after consultation with a supervisor. At the hearing before the on-call judge, the grounds for release should be stated for the record. An ADA may include the cost of detention in his or her argument.
5. An ADA may not appeal a Hearing Officer's decision to release a child without the approval of a supervisor.
6. Victims must be informed as to whether or not the child has been detained or released.

ⁱ The cost of holding a child at the Philadelphia Juvenile Justice Services Center is \$661 per child, per night. See SELA COWGER ET AL., SHELLER CTR. FOR SOC. JUSTICE, DOUBLE PUNISHMENT: PHILADELPHIA'S PRACTICE OF CHARGING PARENTS FOR THEIR CHILD'S INCARCERATION COSTS 24-25 (2016), *available at* <https://www2.law.temple.edu/csj/cms/wp-content/uploads/2016/11/Double-Punishment.pdf>.

ⁱⁱ If a child's parents refuse to take a child home and the child is otherwise appropriate for release, an ADA should not object to releasing the child to another appropriate caregiver.

ⁱⁱⁱ When a child is arrested, the Probation Department evaluates the child using a risk assessment tool called the Detention Risk Assessment Instrument ("DRAI"). Only those children who score above a fifteen receive a hearing before a Hearing Officer; those who score below that number are automatically released. While the DAO believes that the DRAI is useful in certain respects, it is the position of the DAO that the DRAI over-rates certain factors in assessing whether a child is appropriate for release.

^{iv} In Home Detention is a court-ordered supervision program through which youth participate in community-based activities weekly under the supervision of a youth worker. Activities are tailored to the individual child, but include workshops, drug and alcohol awareness, sexual health career development, financial literacy, and sports and art training. IHD costs between \$36 and \$40 per child, per day.

^v Intensive In-Home Supervision Program includes one to three daily contacts between the youth and the service provider, therapeutic and instructional workshops, and one-on-one mentoring.

^{vi} The Juvenile Probation Department owns 250 GPS ankle monitors, which are attached to juveniles in the delinquent system, often as a condition of their release. While between 100 and 120 juveniles are held at the JJSC, nearly all available GPS monitors are in use at any given time. Often juveniles are kept on GPS for months at a time without any review of its necessity. Devices must be re-charged for more than an hour each day at an outlet, at which time the juvenile must stand or sit next to an outlet. When monitors are damaged, the juveniles are ordered to pay for the damage.

^{vii} An Evening Reporting Center is available to some children prior to their adjudicatory hearings. These centers provide a place for children to receive academic support as well as opportunities to engage in art and music programing. See Geo, *Evening Reporting Centers: A Second Chance Through Music*, JUMP (Aug. 8, 2016), <https://jumpphilly.com/2016/08/08/evening-reporting-center-a-second-chance-through-music>. Evening Reporter Centers cost approximately \$60 per child, per day.

^{viii} A juvenile out-of-home placement is a facility designed and operated for the benefit of delinquent children that provides substitute care for children who have been adjudicated delinquent and who the Court has found cannot be adequately supervised in the community. See 42 Pa.C.S. § 6302. These facilities vary significantly in location, quality of the programing available and level of security.

^{ix} A Hearing Officer (previously known as a Master) is an attorney employed by Family Court who has limited jurisdiction, conferred by the Court of Common Pleas and consented to by the parties. 42 Pa.C.S. § 6305(a), (b). Hearing Officers sit in place of judges at Detention Hearings and at other proceedings in Family Court. Both parties may appeal the decisions of the Hearing Officer to a judge of the Court of Common Pleas. *Id.* at § 6305(d).

Policy #4
Juvenile Disposition Policy With Annotations
January 24, 2019

The following policies are presumptions. An ADA may depart from these presumptions if he or she has good cause to do so and has consulted with a supervisor.

1. Where a youth has been found guilty of a delinquent offense at an adjudicatory hearing and placed on probation, an ADA should ask the Court for the following:
 - a. The least restrictive community supervision program available;^{xxxiii}
 - b. No more than three conditions of probation;^{xxxiv}
 - c. GPS only as a last resort before placement; if GPS is necessary, it should be reviewed at least every thirty days for necessity;^{xxxv} and
 - d. At the victim's request, an ADA may ask for a stay-away order.
2. An ADA should request a deferred adjudication when a child is found guilty at an adjudicatory hearing unless any the following circumstances are present, in which case an ADA should use his or her discretion:
 - a. Where the youth has more than one deferred adjudication;
 - b. Where the youth has a prior adjudication of delinquency;
 - c. Where the youth has been found guilty of possessing a gun;
 - d. Where the youth has been found guilty of rape, sexual assault, involuntary deviant sexual assault, aggravated indecent assault, or indecent assault graded as a felony of the third degree;
 - e. Where the youth was found guilty of a felony of the first degree and a weapon was used; or
 - f. Where the youth has been found guilty of a delinquent act that involves the invasion of the home of another, and a weapon was used in the commission of the act.
3. At the time of disposition, if the Court commits a child to a residential placement an ADA should recommend:
 - a. The closest residential placement that meets the needs of the child;^{xxxvi} and
 - b. No specific length of time of placement should be requested.^{xxxvii}
4. An ADA may not recommend that a child who has only been found guilty of committing a misdemeanor offense be sent to placement at the time of disposition, except with the permission of a supervisor.

5. An ADA may not recommend that a child under the age of 14 be sent to placement except with the permission of a supervisor.^{xxxviii}
6. An ADA should not ask for random marijuana screens as a condition of probation unless there is a reason to believe the child is using a controlled substance. The purpose of drug testing is to make sure that the juvenile is receiving appropriate services in the community.
7. An ADA should consider and inquire of probation officers about the educational needs of the child being placed and the programs available at the placements under consideration. No child should be sent to a placement that cannot meet his educational needs.^{xxxix}
8. Victims must be notified as to the disposition of the case and afforded the opportunity to address the Court.

ⁱ This policy is consistent with the Pennsylvania Juvenile Act instructs the Courts to utilize “the least restrictive intervention that is consistent with the protection of the community, the imposition of accountability for offenses committed and the rehabilitation, supervision and treatment needs of the child” See 42 Pa.C.S. § 6301(b)(3)(i).

ⁱⁱ Advocates for juveniles, as well as the Philadelphia Juvenile Probation Department agree that more than three conditions can be counterproductive for juveniles. Pennsylvania’s Juvenile Justice System Enhancement Strategy Report explains that a juvenile should be assessed by measuring forty-two risks and needs factors so that the assessor can identify the “top three criminogenic needs” of the juvenile and a Probation Officer can create a condition to meet each need. JUVENILE COURT JUDGES’ COMM’N ET AL., PENNSYLVANIA’S JUVENILE JUSTICE SYSTEM ENHANCEMENT STRATEGY 20-21, 33 (2012), *available at* <https://www.pccd.pa.gov/Juvenile-Justice/Documents/JJSES%20Monograph%20Final%20version%20press%20ready%2005%2025%2012.pdf>. This is a best practice recognized in our system and beyond.

ⁱⁱⁱ The Juvenile Probation Department owns 250 GPS ankle monitors, which are attached to juveniles in the delinquent system, often as a condition of their release. While between 100 and 120 juveniles are held at the Philadelphia Juvenile Justice Services Center, nearly all available GPS monitors are in use at any given time. Often juveniles are kept on GPS for months at a time without any review of its necessity. Devices must be re-charged for more than an hour each day at an outlet, at which time the juvenile must stand or sit next to an outlet. When monitors are damaged, the juveniles are ordered to pay for the damage.

It is the position of the DAO, supported by early research, that these devices are over-utilized and can lead to net-widening, where more youth are subjected to court control for longer, with heightened chance of being detained for violations. See NAT'L CTR. FOR JUVENILE JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 2014 NATIONAL REPORT [pin cite needed] (Melissa Sickmund & Charles Puzzanchera eds. 2014). While GPS monitoring can be an effective way to monitor youth who would otherwise require detention, it should not be used for children who only require a lower level of supervision.

^{iv} When children must be sent out of their homes, those who are placed in or close to their communities have an easier time reintegrating into the community after placement. A recent study of New York City's "Close to Home" Initiative, which sought to place delinquent juveniles in facilities inside or close to New York City, saw a vast reduction in out-of-home placement with a shifting of resources to community-based alternatives. The arrest rate among children, which was already falling, fell more quickly after the implementation of Close to Home, in relation of the rest of the state. Close to Home also improved educational supports available to children during placement, with more juveniles successfully reintegrating into school and passing their Regent's Exam after placement. JEFFREY A. BUTTS ET AL., RESEARCH & EVALUATION CTR., JOHN JAY COLLEGE OF CRIMINAL JUSTICE, STAYING CONNECTED: KEEPING JUSTICE-INVOLVED YOUTH "CLOSE TO HOME" IN NEW YORK CITY 5, 34, 38-40 (2014), *available at* <https://jjrec.files.wordpress.com/2015/03/c2h2015.pdf>.

^v Research shows that generally, longer placements do not lead to better outcome for children. See ED MULVEY, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE JUSTICE FACTSHEET 2 (2011), *available at* <https://www.ncjrs.gov/pdffiles1/ojjdp/230971.pdf>. One study found that children who spend longer stretches in juvenile placement may even have an increased risk of re-arrest when they return to their communities. *Id.* They are also very costly; juvenile placements in Pennsylvania cost between \$443 and \$661 per child, per day, or \$161,695 to \$241,265 annually. SELA COWGER ET AL., JUSTICE LAB AND YOUTH SENTENCING & REENTRY PROJECT, DOUBLE PUNISHMENT: PHILADELPHIA'S PRACTICE OF CHARGING PARENTS FOR THEIR CHILD'S INCARCERATION COSTS 24-25 (2016), *available at* <https://www2.law.temple.edu/csj/cms/wp-content/uploads/2016/11/Double-Punishment.pdf>.

^{vi} Research indicates that placement can have significant negative consequences for younger children. RICHARD A. MENDEL, THE ANNIE E. CASEY FOUND., JUVENILE DETENTION ALTERNATIVES INITIATIVE: PROGRESS REPORT 2014 5 (2014) *available at* <https://www.aecf.org/m/resourcedoc/aecf-2014JDAIProgressReport-2014.pdf>. These consequences include: worsening of mental health symptoms, increased risk of suicide, JUSTICE POLICY INST., THE COSTS OF CONFINEMENT: WHY GOOD JUVENILE JUSTICE POLICIES MAKE GOOD FISCAL SENSE 17-18 (2009), http://www.justicepolicy.org/images/upload/09_05_rep_costssofconfinement_ij_pS.pdf, increased risk of delinquency due to interaction with antisocial peers, Ian Lambie & Isabel Randell, *The Impact of Incarceration on Juvenile Offenders*, 33 CLINICAL PSYCHOL.

REV. 448, 451-52 (2013), and an increased risk of victimization, including physical and sexual abuse by staff members and/or fellow residents, RICHARD A. MENDEL, THE ANNIE E. CASEY FOUND., NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION 6-7 (2011), among others. In addition, placement in a secure juvenile justice facility in and of itself may be a traumatic experience for children. Michelle Evans-Chase, *Addressing Trauma and Psychosocial Development in Juvenile Justice-Involved Youth: A Synthesis of the Developmental Neuroscience, Juvenile Justice and Trauma Literature*, 3 LAWS 744, 747 (2014). This is particularly troublesome given that 75-93% of youth entering the juvenile justice system have previously been exposed to trauma. ERICA J. ADAMS, JUSTICE POLICY INST., HEALING INVISIBLE WOUNDS: WHY INVESTING IN TRAUMA-INFORMED CARE FOR CHILDREN MAKES SENSE 5 (July 2010), available at http://www.justicepolicy.org/uploads/justicepolicy/documents/10-07_rep_healinginvisiblewounds_jj-ps.pdf. Parental separation may have a particularly harmful impact on children under the age of 14 because the brain is in a critical stage of development during early adolescence and may be ill-equipped to handle the stress associated with this type of transition. See e.g., Melissa Jonson-Reid & Richard P. Barth, *From Placement to Prison: The Path to Adolescent Incarceration from Child Welfare Supervised Foster or Group Care*, 22 CHILD. AND YOUTH SERVS. REV. 493, 507 (2000) (finding that youth in foster care first placed between ages 12 and 15 were more likely to be incarcerated for a serious or violent offense as adolescents). As a result, in order to minimize the harmful effects of detention on middle-school aged youth, these children should be kept with their parents and in their communities whenever possible. See MENDEL, *supra* note vi, at 14.

vii The educational needs of children sent to placement are not always being met. JULIA RANSOM ET AL., PROJECT UTURN, A PROMISE WORTH KEEPING: ADVANCING THE HIGH SCHOOL GRADUATION RATE IN PHILADELPHIA 12 (n.d.), available at <http://www.projectuturn.net/docs/PromiseWorthKeeping.pdf>; see also ARLEY STYER & EDUCATION LAW CENTER, STONELEIGH FOUNDATION, MOVING THE DIAL: A REPORT ON EDUCATION EXPERIENCES OF CHILDREN IN PENNSYLVANIA RESIDENTIAL TREATMENT FACILITIES 2 (2011), available at: https://www.elc-pa.org/wp-content/uploads/2013/08/access_Moving_the_Dial_Styer.pdf.

Policy #5
Juvenile Review Hearing Policy With Annotations
January 24, 2019

The following policies are presumptions. An ADA may depart from these presumptions if he or she has good cause to do so and has consulted with a supervisor.

1. Residential placement should only be sought if the following community interventions have proved ineffective or impossible:^{xi}
 - a. The juvenile residing with an alternative family member;
 - b. Philadelphia Youth Advocates Program ("PYAP");
 - c. In Home Detention ("IHD");
 - d. Intensive Supervision Program ("ISP");
 - e. GPS monitoring;^{xli} and
 - f. GPS-ERC.^{xlii}
2. Residential placement should not be sought for youth who have been found guilty of two or fewer misdemeanors, unless the child presents a significant, immediate danger to the community.^{xliii}
 - a. Probation "violations" such as missing curfew, failing to attend school, and the use of marijuana should be treated with community programming.
 - b. If a child continues to violate his or her probation by missing curfew or school, or smoking marijuana after programming and services have been provided, an ADA may recommend that the Court open up a dependency petition so that the issues can be addressed in Dependency Court: incorrigibility is not an adequate justification to send a child to placement who has committed a misdemeanor offense.
3. An ADA should not recommend placement solely because a child violates curfew, even if these violations are repeated.
4. A negative school report should not be considered a violation of probation in-and-of itself. A negative school report should begin an inquiry into the young person's educational needs.^{xliv}
5. An ADA should not argue that the continued use of marijuana constitutes a violation of probation that mandates placement. The child should only be referred to drug treatment where the use of marijuana is repeated or the child's guardian asks for treatment.^{xlv}

6. A child should never be placed for failing to pay restitution or court fees.^{xlvi}
7. When a child has been found to be in violation of his or her probation and in need of placement, a child does not necessarily need to be held, pending placement. An ADA's recommendation as to whether or not the child should be held while the probation officer plans should be based upon a consideration of the following:
 - a. If the child poses a danger to the community;
 - b. If a significant danger is posed to the child if he remains in the community; and
 - c. If an ADA fears that a child may run away while the probation officer plans placement. If the ADA so fears, he or she should recommend GPS and not ask that the child be taken out of the home.

ⁱ Sending a juvenile to placement is appropriate only in rare circumstances and then, the least restrictive alternative is best. The Court must allow a juvenile to remain in the community whenever possible, "separating the child from parents only when necessary for his welfare, safety or health of in the interests of public safety" 42 Pa.C.S. § 6301(b)(3).

Research shows that confining juveniles does not reduce recidivism and can actually worsen outcomes for young people. See Jake Horowitz & Arna Carlock, *Nearly a Quarter of Confined Juveniles Nationwide Held for Noncriminal Infractions*, PEW TRUSTS ([Feb. 14, 2018](https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/14/nearly-a-quarter-of-confined-juveniles-nationwide-held-for-noncriminal-infractions)), <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/14/nearly-a-quarter-of-confined-juveniles-nationwide-held-for-noncriminal-infractions>. Studies in both Ohio and Illinois found that for all but the highest-risk youth, juvenile placement led to less favorable outcomes. In Illinois, juveniles sent to placement were 23% more likely to recidivate than juveniles who received services in the home. See Anna Aizer & Joseph J. Doyle, Jr., *Juvenile Incarceration, Human Capital, and Future Crime: Evidence From Randomly Assigned Judges*, 130 Q.J. ECON. 759, 761 (2015).

ⁱⁱ The Juvenile Probation Department owns 250 GPS ankle monitors, which are attached to juveniles in the delinquent system, often as a condition of their release. While between 100 and 120 juveniles are held at the Philadelphia Juvenile Justice Services Center, nearly all available GPS monitors are in use at any given time. Often juveniles are kept on GPS for months at a time without any review of their necessity. Devices must be re-charged for more than an hour each day at an outlet, at which time the juvenile must stand or sit next to an outlet. When monitors are damaged, the juveniles are ordered to pay for the damage.

It is the position of the DAO, supported by early research, that these devices are over-utilized and can lead to net-widening and net-deepening, where more youth are subjected to more court control for longer periods of time, with heightened chance of being detained for violations. See Kate Weisburd, *Monitoring Youth: The Collision of Rights and Rehabilitation*, 101 IOWA L. REV. 297, 302-03 (2015). While GPS monitoring can be an effective way to monitor children who would otherwise require detention, it should not be used for children who only require a lower level of supervision.

iii An Evening Reporting Center is available to some children prior to their adjudicatory hearings. This center provides a place for children on GPS to receive academic support as well as opportunities to engage in art and music programming.

iv Philadelphia County has the highest rate of juvenile placement of any jurisdiction in the state. It sends two and one-half times the number of children to placement as Allegheny County (the next most populated county) and five times as many as Delaware County (the third most populated county). Juvenile Court Judges' Commission Pennsylvania Juvenile Court Disposition Review, p. 19. Philadelphia accounts for 28.3% of placements statewide. JUVENILE COURTS' JUDGES COMM'N, 2016 PENNSYLVANIA JUVENILE COURT DISPOSITIONS 19 (2016).

Research has found that sending youth to placement not only fails to reduce recidivism but actually increases the likelihood that youth will recidivate. Many states (as discussed below) have taken steps toward limiting the use of placement. See Jake Horowitz & Arna Carlock, *Nearly a Quarter of Confined Juveniles Nationwide Held for Noncriminal Infractions*, PEW TRUSTS (Feb. 14, 2018), <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/14/nearly-a-quarter-of-confined-juveniles-nationwide-held-for-noncriminal-infractions>.

In 2013, Georgia enacted House Bill 242, which prohibited sending youth to placement unless he or she was adjudicated delinquent for a felony offense, had been previously adjudicated for a felony, or had at least three prior adjudications for a delinquent act. H.B. 242, 152nd Gen. Assemb., Reg. Sess. (Ga. 2013), GA. CODE ANN. § 15-11-601(a)(10).

In 2014, Kentucky's Senate Bill 200 prohibited youth convicted of misdemeanors or Class D felonies from being sent to placement unless they were adjudicated for a deadly weapon offense, an offense that would classify the youth as a sex offender, or unless the youth has three or more prior delinquency adjudications or four or more prior adjudications for supervision violations. S.B. 200, 2014 Reg. Sess. (Ky. 2014), KY. REV. STAT. ANN. § 635.060(4)(a).

Utah passed House Bill 239 in 2017 which mandates that youth cannot be sent to placement for technical violations of probation (referred to in local parlance as contempt of court). The bill also mandated that youth who do not "pose a risk of harm to others" cannot

be placed in secure detention facilities. Youth adjudicated of status or delinquency offenses do not qualify. (Status offenses are offenses like habitual truancy that are prohibited by law but would not be offenses if committed by an adult.) Youth can only be placed in community placement or secure placement if they have a present felony, a present misdemeanor with more than five prior delinquency adjudications each arising from separate incidents, or have a present misdemeanor offense that involves the use of a firearm. H.B. 239, 62nd Legis., Gen. Sess. (Utah 2017), UTAH CODE ANN. § 78A-6-117(2)(d)(i).

Passed in 2015, West Virginia's Senate Bill 393 prohibits the placement of first-time status offenders and nonviolent misdemeanor offenders unless there is a belief that the youth is at risk of abuse or neglect if they continue living in their home. S.B. 393, 82nd Leg., Reg. Sess. (W. Va. 2015), W. VA. CODE ANN. § 49-4-712(a)(2).

In 2016, Kansas' Senate Bill 367 prohibited the removal of youth from their homes for technical violations of probation. S.B. 367, 86th Leg., Reg. Sess. (Kan. 2016), *codified as amended* KAN. STAT. ANN. § 38-2392(b); see also THE PEW CHARITABLE TRUSTS, KANSAS' 2016 JUVENILE JUSTICE REFORM 13 (2017), available at http://www.pewtrusts.org/-/media/assets/2017/06/pspp_kansas_2016_juvenile_justice_reform_brief.pdf?la=en&hash=82701CC0B108B9185C41100C9231357DD6B16E91.

^v Truancy is a particular problem for low-income students who are 60% more likely to be chronically absent from school. As a result of this absence, many students suffer from poor academic performance. The causes of truancy are complex: literature on adolescent development demonstrates that middle school aged youth from high-poverty areas experience substantial social pressure to participate in activities that negatively affect school attendance like taking care of family members. The continued criminalization of truancy perpetuates racial inequalities in the criminal justice system as students of color are more likely to be truant than white students. FARAH Z. AHMAD & TIFFANY MILLER, CTR. FOR AM. PROGRESS, THE HIGH COST OF TRUANCY 6-9 (2015), available at <https://cdn.americanprogress.org/wp-content/uploads/2015/07/29113012/Truancy-report4.pdf>.

^{vi} The impact of marijuana on the juvenile brain may have been previously overstated. Recent studies suggest that the impact of marijuana is temporal and wears off after seventy-two hours. See, e.g., Claudia Wallis, *What Pot Really Does to the Teen Brain*, SCIENTIFIC AMERICAN (Dec. 1, 2017), <https://www.scientificamerican.com/article/what-pot-really-does-to-the-teen-brain>.

Furthermore, recent studies suggest that ending the sanctions imposed for the use of marijuana is unlikely to increase its use. Christopher Ingraham, *Following Marijuana Legalization, Teen Drug Use is Down in Colorado*, WASHINGTON POST (Dec. 11, 2017), available at <https://www.washingtonpost.com/news/wonk/wp/2017/12/11/following->

marijuana-legalization-teen-drug-use-is-down-in-colorado/?utm_term=.1eaba6acf5d6 (recounting federal survey data that shows a statistically significant drop in teen marijuana usage in Colorado a year after its legalization (citing SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., NATIONAL SURVEY DATA ON DRUG USE AND HEALTH: COMPARISON OF 2014-2015 AND 2015-2016 POPULATION PERCENTAGES (2016), *available at* <https://www.samhsa.gov/data/sites/default/files/NSDUHsaeShortTermCHG2016/NSDUHsaeShortTermCHG2016.htm>)).

^{vii} Court fees and restitution can keep children tied to the criminal justice system simply because they are poor. See JESSICA FEIERMAN ET AL., JUVENILE LAW CENTER, DEBTORS' PRISON FOR KIDS?: THE HIGH COST OF FINES AND FEES IN THE JUVENILE JUSTICE SYSTEM 6-8 (2016), *available at* <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf>.

Policy #6
The Use of Solitary Confinement
January, 2019

The DAO strongly opposes the use solitary confinement for all children. Solitary confinement—also known as room confinement, isolation, segregation, separation, seclusion and restricted housing—is the isolation of a child for any reason other than as a temporary response to behavior that threatens immediate harm to the youth or others. Keeping children in isolation can have long-lasting and devastating consequences on youth including trauma, psychosis, depression, anxiety and an increased likelihood of self-harm.

Isolating a child when he poses an immediate threat to himself or to others is appropriate for short periods of time, not exceeding several hours. Anything beyond this is unnecessary and causes trauma. Solitary confinement is not an appropriate form of punishment for young people.

There is no research suggesting that solitary confinement is an effective means of controlling the behavior of young people in custody, and yet isolation is not uncommon, particularly for those Philadelphia youth who are held in adult facilities. The DAO urges the Philadelphia Department of Prisons to rethink its policy on juvenile solitary confinement and train its staff in alternative methods of discipline. We also ask that our juvenile justice partners monitor the placements where we send Philadelphia children to ensure that these methods are never used on our children.

Policy #7
Juvenile Bench Warrant Policy
July, 2019

The following policies are presumptions. An ADA may depart from these presumptions if he or she has good cause to do so and has consulted with a supervisor.

1. When a juvenile fails to appear for his or her court date, an ADA should ask for a bench warrant but oppose the imposition of a “Bench Warrant Hold,” “Bench Warrant— Do Not Release” or a “Judge Only Bench Warrant.”^{xlvii} These types of bench warrants mandate that a juvenile who fails to appear in court, once apprehended, is held in custody until he or she can be scheduled to appear before the judge assigned to his case—a process that can take up to two weeks.^{xlviii} A Hearing Officer lacks the authority to release a juvenile held on one of these warrants. This delay in a substantive hearing violates the juvenile’s right to due process, pursuant to 42 Pa. CSA § 6332, which states that a juvenile has a right to a detention hearing within 72 hours of apprehension.^{xlix}
2. When a Family Court judge states that he intends to order a “Bench Warrant Hold,” a “Bench Warrant—Do Not Release” or a “Judge Only Bench Warrant,” the ADA assigned to the case should state for the record that:
 - S/he opposes such an order because this office considers it a violation of the juvenile’s due process rights and a violation of the Juvenile Act.¹
 - If the Court insists upon such an order, when the child is apprehended, s/he should see the issuing judge the following business day.
3. An ADA should oppose any standing order that commits a child to a facility upon apprehension, usually called a “Bench Warrant Hold, Do Not Release, Commit to Placement Upon Apprehension.” The circumstances of the individual juvenile should be addressed at the time of apprehension.
4. Where one of the bench warrants described above has been ordered previously and a juvenile is apprehended and appears before the Hearing Officer, the ADA should request that the child be listed before the issuing judge on the following business day.

ⁱ There is some dispute among the Hearing Officers, who sit in detention hearings every day at the Philadelphia Juvenile Justice Services Center (“PJJSC”), as to whether or not they have the authority to release a child who is being held on a “Bench Warrant—Hold.” Most will not do so.

ⁱⁱ These types of bench warrants are problematic for a number of reasons. First, they assume that every juvenile has control over his or her ability to appear in court and should be punished with spending time in custody for his or her failure to appear. This does not match the circumstances of most children, who rely on parents to bring them to Court. Second, they do not allow the Hearing Officer the flexibility to treat every child as an individual and hear the circumstances of his or her failure to appear before making a determination as to whether or not the child needs to be removed from the community for his or her appearance to be assured in the future. Lastly, the practice is fiscally irresponsible. The City spends \$661 per night to keep a child at the PJJSC. See, Pennsylvania Juvenile Courts Disposition Report, pp. 24-25. Detention should be reserved for those children who need it most.

ⁱⁱⁱ A juvenile who is apprehended on one of the bench warrants described above will be brought before the Hearing Officer within 72 hours, of apprehension, but if the juvenile has a “Bench Warrant—Do Not Release” or a “Judge Only Bench Warrant” the Hearing Officer lacks the authority to release the juvenile and will direct staff to list the juvenile in front of his or her judge at the earliest possible date.

^{iv} See, 42 Pa. CSA § 6332.

Philadelphia DAO Policy on Improving Assistant District Attorney Communication with Victims of Crime



Effective Date: 1/31/2019

One of the most important responsibilities you have as an Assistant District Attorney is timely communication with victims about the criminal court process and potential outcomes of the case. Principles of procedural justice (fairness in the process) must guide your interactions with victims because fairness in the process improves public perception and trust. Research shows that a criminal justice system that grants victims representation and a sense of accuracy in the process creates a higher level of satisfaction for a victim.¹

Procedural Justice has several key components:

- (1) Voice: The victim's opportunity to be heard.**
- (2) Respect: The preservation of dignity in interactions with victims and defendants.**
- (3) Trust and Neutrality: A decision-making process that is unbiased and consistent.**
- (4) Understanding: Making sure the victim has an understanding of the court process throughout the case.**
- (5) Helpfulness: Re-assuring the victim that the justice system has an interest in the needs of victims, witnesses, communities, and defendants.**

Incorporating procedural justice principles by applying these key components into your communication with victims makes prosecutions more effective and increases victim satisfaction in your decisions and outcome of the case.

¹ For a comprehensive discussion about Procedural Justice as it relates to stakeholders in the criminal justice system see FJP "Issues at a Glance: Procedural Justice: Enhancing the Legitimacy of the Justice System" brief at <https://fairandjustprosecution.org>. See also "Procedural Justice is for Victims Too" at www.proceduralfairness.org.

Pennsylvania Crime Victims Act

In addition to the principles of procedural justice, your interactions with victims must also be guided by the PA Crime Victims Act (18 P.S. § 11.102).² You as a member of the District Attorney's Office are to honor the following victims' rights:

- (1) To be notified of significant actions and proceedings within the criminal justice system pertaining to the victim's case. § 11.201(2)
- (2) In cases involving a personal injury crime or burglary, to submit prior comment to the prosecutor's office in the potential reduction or dropping of any charge or changing of a plea in a criminal proceeding or diversion of any case. § 11.201(4)
- (3) To have an opportunity to offer prior comment on the sentencing of a defendant, to include the submission of written and oral victim impact statements detailing the physical, psychological, and economic effects of the crime on the victim and the victim's family. § 11.201(5)
- (4) To be restored, to the extent possible, to the pre-crime economic status through the provision of restitution. § 11.201(6)

The PA Crime Victims Act § 11.213 further lays out the responsibilities of a Prosecutor's Office including, but not limited to:

- (1) PLEADING: In cases involving a personal injury crime or burglary, the prosecutor's office shall provide notice of and offer the opportunity to submit prior comment on the potential reduction or dropping of any charge or changing of a plea in a criminal proceeding or diversion of any case. § 11.213(b)
- (2) SENTENCING: The prosecutor's office shall provide notice of the opportunity to offer prior comment on the sentencing of an adult which includes the submission of oral and written impact statements. § 11.213(c)

Ultimately, the responsibility of victim communication falls on you as the assigned Assistant District Attorney. You and your supervisor(s) will be accountable for making reasonable efforts to comply with the Pennsylvania Office of Victim Advocate. Following the policies outlined in this memo will ensure that you have honored victim' rights and applied these rights to the principles of procedural justice.

² For the complete text of the Crime Victims Act, refer to the PA crimes code 18. P.S. §11.201-216.

I. Documentation of conversations with the victim in the contact log

The trial file is the most important place to find all information pertaining to the history of your case. Every trial file has a contact log fastened to the flap. This log provides a history of all interactions with victims.

YOU MUST:

- (1) Use this contact log to document all victim/witness communication and attempts at communication, including the following:
 - The date on which the call is made, email sent, letter mailed out, or in person conversation took place.
 - Phone number you called from and the number you called.
 - Purpose of your call to the victim.
 - Name of the person you spoke with.
 - Result of the call (e.g. will attend court).
 - Additional action taken, if any (e.g. CW will email ADA photos of injury).
 - CMS address updates.
- (2) Sign your name next to the entry in the contact log so that anyone reviewing the file knows you spoke with the victim.
- (3) Document all in-court appearances on the outside of the file in the disposition box including:
 - Name of witness who appeared for court (e.g. NAME - P)
 - Name of witness who testified (e.g. NAME - P+T)
 - Name of witness who failed to appear (e.g. NAME - FTA)

II. Notifying the victim of upcoming court listings

The Case Management System (CMS) will automatically generate a subpoena and mail it to the victim's address listed on the PARS (Preliminary Arraignment Reporting System) arrest paperwork. This occurs in every case except for cases in the Homicide Unit and cases in the Investigations Division Units (Special Investigations, Economic Crime, Insurance Fraud). CMS tracks all documents sent out from the office in the section titled "*output history*." Output history shows you the case specific date when the witness subpoena was generated, how it was delivered, and the exact address to which the subpoena was delivered.

YOU MUST:

- (1) Call the victim prior to an upcoming court listing to discuss: ☐ What to expect at the next court listing,
 - Victim impact statement where the case is set for trial and ☐ Any input the victim may offer.
- (2) Confirm that the victim has the same phone number and address.
 - If the victim's contact information has changed, update CMS with the new information.
- (3) Ask for alternative contact information for the victim.
 - Email address
 - Work phone number and address
 - Family or friend's phone number and address
 - Any phone number and address that the victim believes will not change in the near future
- (4) Document all conversations with the victim on the contact log and any follow up actions you take.
- (5) Check your voicemail for messages from a victim and provide a summary of that message on the contact log including date, time, and the call back number that the victim left.

Prior to the first court listing, the victim will receive an initial contact letter from the Victim Witness Services Unit. This letter outlines the victim's rights, including directions to a safe witness waiting room at the Criminal Justice Center, financial reimbursement, transportation to and from court, changes in defendant's custody status, and a phone number/email to Victim Witness Services for all other concerns. Accompanying the letter is a separate restitution form

and victim impact statement that the victim can complete and return to the Victim Services Unit. CMS output history tracks the sent date and the address where the letter is mailed.

Victim Witness Coordinators are responsible for making sure that information, including the returned restitution/victim impact statement, from any victim in response to this initial letter reaches the case file.

III. Victim information gathering and documentation at the preliminary hearing

In a felony case, the preliminary hearing listing is the **only in-person opportunity you have to gather input for a plea bargain** that will be made in the Court of Common Pleas.

YOU MUST:

- (1) Ask the victim for input on the case in an open-ended way.
 - Allow the victim to express themselves without steering or directing the input.
 - Specifically inquire about physical consequences and restitution requests.
 - Specifically advise on their right to give a victim impact statement.
- (2) Confirm with the victim that the contact information has not changed.
 - If changed, update CMS and notate this action on the contact log.

YOU MUST NOT: Decide what the offer will be on *felony cases listed for preliminary hearing*. If asked about this, explain to the victim that the exact terms of the offer will be decided at a later point in the case.

EXCEPTION:

- (1) You make a pre-preliminary hearing offer with supervisor approval
- (2) Vertical assignments where the preliminary hearing ADA is making the SMART offer

IV. Filling out the BIF form to include the victim's input

There will be one uniform Municipal Court Unit Bills of Information (BIF) sheet that you will fill out for each held for court case following a preliminary hearing.

YOU MUST:

- (1) Document your conversation with the victim in the top section of the BIF sheet.
- (2) Include all information gathered.

V. Conveying an offer in the SMART room after considering victim input

The initial offer on a felony case is made in the pre-trial SMART³ room within three weeks after the held for court date.

YOU MUST:

- (1) Consider victim input when formulating a plea offer in a case, referring to the following:
 - BIF sheet for this information.
 - Contact log for this information.
 - Information mailed or emailed to the office.
 - Information that is input into CMS following phone contact with a victim - a copy of this entry will be placed in the file on the left flap by a Victim Witness Coordinator (VWC) or Trial Listing Clerk (TLC).
- (2) Call the victim to notify them of the terms of the offer.
- (3) Ask if the victim would like to give a victim impact statement at sentencing. ☐ The victim can submit via written statement or in-person testimony.

³ In all Common Pleas Court cases except Homicide and Indicting Grand Jury cases, pre-trial offers are extended to defense counsel prior to the pre-trial conference listing in the SMART rooms. SMART stands for Strategic Management Advance Review and Consolidation, Readiness, and Trial. SMART rooms are staffed by attorneys in the Pre-Trial Unit.

- (4) Document this conversation and all attempts at victim contact on the contact log.
- (5) Send a “no contact letter” where you cannot reach a victim via phone or email. □ You can generate this letter in CMS and mail to the victim.

Prior to the first SMART listing, the victim will receive an arraignment contact letter from the Victim Witness Services Unit. This letter states that a plea offer will be made in the case and reminds the victim of their right to provide comment and request restitution prior to the offer being made.

CMS output history tracks the date that this arraignment letter is mailed out and the address where it is mailed. Victim Witness Coordinators are responsible for making sure that any information from a victim in response to this letter reaches the case file.

VI. Ongoing duty of the trial attorney to notify the victim and allow for prior comment

Where the offer is rejected in the SMART room, the case is spun out for a waivers trial or a majors scheduling conference to pick a trial date. All future victim interaction is with the trial attorney.

YOU MUST:

- (1) Call victims prior to court listings and update them on the status of the case.
- (2) Familiarize yourself with the victim’s input.
 - BIF Sheet
 - Contact log
 - Information mailed or emailed to the office
 - Information that is input into CMS following phone contact with a victim - a copy of this entry will be placed in the file on the left flap
- (3) Notify the victim when there is a change in the plea offer.
 - If you cannot reach the victim, you must mail the victim a no contact letter that you generate by CMS.

- (4) Provide the victim a chance to give a victim impact statement and request restitution on their behalf at the sentencing where your case is a guilty plea or conviction.
- (5) Document all victim conversations on the contact log in proper format.

VII. Common Pleas Court Case disposition notification to the victim

YOU MUST:

- (1) Mail a disposition letter to the victim upon completion of a CP case.
 - Generate this letter via CMS by going to “participants” and clicking the drop down box next to the victim and selecting from the disposition templates
 - Template options are Nolle Prose, Not Guilty, Probation, and State Custody
- (2) Put a copy of the disposition letter in the file after you send the original to the victim
- (3) Document the contact log that a disposition letter has been sent

VIII. Victim Witness Coordinators will assist attorneys with victim communication

Every unit has victim witness coordinators available to assist you in carrying out the policies and tasks in this memo. On the H drive is a list of Victim Witness Coordinators in each unit and their assigned courtrooms. When you designate a Victim Witness Coordinator to perform any of the above tasks there are a few things to keep in mind.

YOU MUST:

- (1) Clearly state the task and the timeline in which you need it accomplished.
- (2) Document on the contact log that you designated the VWC to complete the task.

- (3) Give the file to the VWC to complete the task and update the contact log.
- (4) Confirm that the VWC updated the contact log when the file is returned.
- (5) Remember that you gave the file to the VWC.

Philadelphia DAO Policies on: (1) Disclosure of Exculpatory, Impeachment, or Mitigating Information, (2) Open-File Discovery



Effective Date: 10/1/2020

Subject to any future changes in the law, this sets forth the office's policies regarding: (1) the disclosure of exculpatory, impeachment, or mitigating information, pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and its progeny; Rule 573 of the Pennsylvania Rules of Criminal Procedures; Rule 3.8 of the Pennsylvania Rules of Professional Conduct; and Rule 3.8(g) & (h) of the American Bar Association Model Rules of Professional Responsibility, as well as (2) open-file discovery.

I. The Disclosure of Exculpatory, Impeachment, or Mitigating Information

A. The Law and Ethics

- In Brady, the Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of the prosecution.” Brady v. Maryland, 373 U.S. 83, 87 (1963).
- Pa.R.Crim.P. 573(B)(1)(a) requires that a prosecutor disclose “[a]ny evidence favorable to the accused that is material either to guilt or to punishment, and is within the possession or control of the attorney for the Commonwealth.”
- Pa.R.P.C. 3.8(d), in turn, requires a prosecutor in a criminal case to “make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.”
- ABA Model R.P.C. 3.8 (g) addresses a prosecutor's post-conviction obligation to disclose Brady evidence by specifically stating that “[w]hen a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall: (1) promptly disclose that evidence to an appropriate court or authority,

and (2) if the conviction was obtained in the prosecutor's jurisdiction, (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and (ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

- ABA Model R.P.C. 3.8 (h) also requires a prosecutor to seek to remedy a conviction when he or she is aware of clear and convincing evidence which establishes that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit.

B. Guidance

Information is *exculpatory* if it tends to excuse, justify, or absolve the guilt of a defendant. *Impeachment* information refers to a subcategory of exculpatory information that can be used to attack the credibility of a Commonwealth witness. Although it may sometimes be more difficult to identify, courts have treated impeachment information as significant because the truthfulness and reliability of a given witness may ultimately be determinative of a defendant's guilt or innocence. Information is *mitigating* if it tends to reduce the moral blameworthiness of the defendant.

While such definitions are facially simple, any application of these definitions to a given case requires a fact-specific analysis with the understanding that disclosure compliance is contextual.

It is important to understand, however, that questions of evidentiary materiality should *not* factor into a prosecutor's determination of which pieces of information qualify as exculpatory, impeaching, or mitigating. A prosecutor has the obligation to disclose exculpatory, impeaching, or mitigating evidence—full stop.

For purposes of these Policies, this office considers the court-determined constitutional obligations laid down in Brady and its progeny to be co-extensive with the rules-based obligations observed by the Commonwealth set out in the rules of criminal procedure and professional conduct as well as the ABA Model Rules' extension of prosecutorial disclosure obligations in the post-conviction realm.

C. Policy

Assistant district attorneys must understand and comply with their constitutional, statutory, and ethical duties to disclose exculpatory, impeaching, and mitigating information to the defense. These duties exist regardless of the particular form of the information (i.e., written v. oral, recorded v. unrecorded) and regardless of whether the criminal case is resolved via plea or trial.

In the event that an assistant district attorney is uncertain about disclosure or concludes that disclosure is in fact not required, that attorney shall consult with his or her supervisor regarding the matter. In cases where an assistant district attorney decides to withhold information, he or she must document and be prepared to articulate a basis for that decision. If additional guidance is needed regarding whether information falls within an assistant district attorney's

constitutional, statutory, or ethical disclosure obligations, the Conviction Integrity Unit should be consulted.

Any disclosure of exculpatory, impeaching, and mitigating evidence shall be recorded in an approved office disclosure form and shall occur as soon as practicable. Because a prosecutor's statutory and ethical duty to disclose such information is a continuing obligation, if new information becomes known to or comes into the possession of an assistant district attorney, the existence of that information shall be promptly disclosed to the defendant or the court.

A prosecutor's Brady obligation is based on due process and exists to ensure a defendant a fair trial as it unfolds. However, in light of the ABA Model R.P.C.'s extension of Brady obligations to the post-conviction stage, if an assistant district attorney acquires information which casts doubt upon the correctness of a conviction, he or she shall adhere to Rule 3.8(g) and (h) by promptly disclosing to the defense any new Brady information that is acquired or learned post-trial.

Intentional failures to disclose exculpatory, impeaching, or mitigating information will not be tolerated and will be subject to discipline.

II. Open-File Discovery

A. Overview

Open-file discovery ("OFD") refers broadly to a concept of prosecutorial transparency, wherein the prosecution provides the defense with everything in its file, irrespective of evidentiary materiality. Proponents of OFD emphasize the ways in which the practice coheres with arguably the most elemental tenet of our legal system, the pursuit of truth.

More pointedly, OFD has several significant advantages:

- *Fairness*: Since defendants in criminal trials typically wield less resources, OFD gives them the opportunity to level the legal playing field by accessing information that would otherwise be cost-prohibitive.
- *Informed Decision-Making*: Informed defendants can make more deliberate decisions about whether to accept a plea or proceed to trial when they know the full weight of the evidence against them.
- *Efficiency*: OFD conserves prosecutorial and judicial resources by encouraging defendants who fully understand the weight of the evidence against them to plead guilty.
- *Error reduction*: Because OFD requires full disclosure without regard to materiality, prosecutors are not faced with the kind of discretionary disclosure decisions that can result in inadvertent or erroneous evidentiary suppression.

B. Current Legal Terrain

Presently, there is no national model for OFD, with states falling along a continuum with respect to how much information prosecutors must disclose to the defense. Although this policy draws from the precepts of OFD insofar as it seeks to excise the question of materiality from

evidentiary analysis, the OFD policy is not assuming any position on the logistical issues associated with implementing OFD office wide. With that said, this office is actively working with IT and the Executive Team to create an electronic infrastructure and case management system capable of maintaining case files in such a way as to allow for efficient identification of information disclosable pursuant to OFD while also ensuring privileged information exempt from OFD is maintained separately so as to protect the confidentiality of that information (i.e., witness safety, grand jury and work product).

III. Goal

All criminal defendants deserve a fair trial and reasonable access to justice thereafter. Whether intentional or negligent, prosecutorial suppression of exculpatory, impeaching, and/or mitigating information at the plea, trial, or post-trial stage can result in flawed adjudications and unwarranted convictions, which directly undermines perhaps the most basic tenet of our legal system, the pursuit of truth.

In enacting these policies and committing to adopting OFD as soon as practicable, this office demonstrates an ongoing commitment to the kind of fair criminal law practice that will invariably reinforce its legitimacy in the eyes of the community it serves.

Philadelphia DAO Women Centered Policies



Effective Date: 10/1/2020

These policies are based on the special experiences of women in the Criminal Justice System and are designed to ameliorate certain injustices in the system that are mostly experienced women. It should be emphasized that these policies do not just apply to women. They apply to women and to any one else of any gender who is similarly situated. Like all policies, they are presumptive only, but an Assistant DA may only deviate from the policy upon consultation with and approval from a Supervisor.

- Regarding Single Parenthood
 - Consider single parenthood of minor children as a mitigating factor to be taken into account when considering sentencing issues.
 - Consider alternatives to total incarceration where possible, and if not possible, consider a sentence for the qualifying defendant to the county prison.
- Regarding a History of Abuse
 - Consider a history of abuse as a mitigator that will either lower the grade of the crime charged or be given consideration when making a plea offer or a sentencing recommendation. In some cases, it might be considered a complete defense.
 - This will be done on a case by case basis. Various factors will be considered, including but not limited to:
 - the type of abuse
 - the length of time that the abuse continued
 - the type of injuries inflicted
 - the existence or non-existence of provocation
- Regarding Charging
 - Only charge the accused with crimes that reflect the actual extent of the participation in the criminal episode.
 - Do not use the Felony-Murder Rule, Accomplice liability or Conspiracy to raise the level of the crime charged unless this is supported by specific facts.

- Regarding Pregnancy
 - Whenever possible, pregnant accused should not be incarcerated pre-trial and, in the event of a conviction, a sentencing solution should be devised that will not require a pregnant offender to give birth in prison.
 - Where an offense requires total incarceration, unless there is articulable proof of dangerousness or risk of flight, execution of sentence should be deferred until 3 months after the birth, unless the defendant does not wish to defer.
 - We will cooperate with other organizations in the community to work toward providing a half-way house where pregnant persons, who require a quasi-prison setting, could be housed both before and after, the birth of offspring.

- Regarding Section 42 Pa C.S. §9762
 - This section of the Code has not been used in recent years because of the overcrowding situation in the Philadelphia County Prisons, which has now been corrected.
 - This section of the Code permits a State sentence of more than two years minimum but less than five years maximum to be served in the County Prison if the DAO agrees and the Judge allows it.
 - This section of the code is particularly important for women because the only 2 State prisons for women are located far from Philadelphia in locations where there is no access to public transportation.
 - We will work with Secretary Wetzel and Commissioner Carney to try to have this section of the code reactivated so as to give us a useful and humanitarian sentencing alternative

Philadelphia DAO Additional Policies To End Mass Supervision*



Effective Date: 1/17/2022

These policies are presumptive, not mandatory requirements. Where extraordinary circumstances suggest that an exception is appropriate, specific supervisory approval must be obtained. Where extraordinary circumstances suggest that an exception is appropriate, specific supervisory approval must be obtained. Wherever the term “supervisory approval” is used, it means that:

- (1) An Assistant District Attorney must obtain approval of the unit’s supervisor and the unit’s supervisor must then obtain approval from the District Attorney, or in his absence, the approval of one First Assistant District Attorneys.
- (2) If an Assistant District Attorney’s request is disapproved by the unit’s supervisor, the Assistant District Attorney may, but is not required to request re-consideration of that decision by the District Attorney, or in his absence, one of the First District Attorneys. Any re-consideration shall be a discussion between the ADA, unit supervisor, and the District Attorney or in his absence one First Assistant District Attorneys. Freedom of thought is encouraged in the Philadelphia DAO. No adverse consequence to the ADA will result from requesting reconsideration.
- (3) Bona fide verbal approvals and disapprovals are sufficient and must be noted in the case file, including all relevant dates and identities of all personnel involved.

These policies do not apply to defendants for whom an intelligence assessment is provided in the file, Homicide or FVSA matters, Mental Health cases, or as otherwise excluded by law.

* (THESE POLICES AMPLIFY AND MODIFY SOME OF THE POLICIES PREVIOUSLY ANNOUNCED MARCH 21, 2019.)

For additional information and citations regarding mass supervision, please see ADDENDUM.

I. **Negotiating or Recommending Conditions of Probation or Parole** - When negotiating pleas or recommending sentence after trial, to aid courts in exercising their authority in setting only those probation or parole conditions that are necessary:

A. ADAs should **negotiate conditions of probation with defense or recommend the fewest conditions necessary for public safety.**

B. **Consider non-reporting probation or parole as the starting point for all cases.**

C. **If recommending reporting probation,** reporting to the probation department and the “general condition” to obey all criminal laws are the two standard conditions to be recommended.

D. **Telephone or Zoom reporting is preferred** - Telephone or Zoom reporting is preferred for reporting probation, with a requirement of in-person reporting only when necessary for public safety; additional conditions may be added if they are demonstrably related to public safety or to make restitution.

E. **Put the conditions on the record** - ADAs must ask the court to put the conditions on the record and to notify AAPD that only the judge-ordered conditions imposed at sentencing apply.

F. **Travel** - ADAs must recommend that the Court waive APPD travel notification requirements and recommend granting permission to travel without notifying probation officers for *work-related reasons and bona fide child-care-related reasons*, even if the probation supervision terms include other travel restrictions.

G. **Special conditions** - Before recommending special conditions beyond reporting and obeying laws, ADAs must contact a supervisor to obtain approval.

H. **Early Termination of Probation or Parole** –

1. During plea negotiation or at sentencing, ADAs should inform the defense that, if certain criteria are met, the Commonwealth will consider stipulating to early termination of parole.

2. Furthermore, if possible, the terms under which the Commonwealth has agreed to consider early termination of probation or parole should be placed on the record as part of the sentencing order, and, if possible, the Defendant should be given a short certificate containing the terms.

a) Instead of a short certificate, a “good time contract” may be signed by the ADA and the Defendant and a copy kept in the DAO files.

II. **Responding to Defense Petitions for Early Termination of Probation or Parole** – To expand the use of early terminations of probation or parole, ADAs will support petitions for early termination when appropriate, as well as when the defendant meets the criteria below.

A. Specifically, ADAs shall join in motions to terminate when the Defendant:

1. is not charged with a new offense or found in violation of his/her parole or probation for the first half of his/her supervision term, and

2. has served a minimum of 6 months of total supervision (parole plus probation), for misdemeanors or 18 months of total supervision for felonies.

B. Additionally, if the defendant served time in jail or prison for the matter and, while in custody, completed educational or vocational certifications, prison maintenance and other work programs, community service programs, or substance use and other therapeutic programs, the defendant may be entitled to an additional one month per program completed towards early probation termination at the discretion of the ADA.

III. **VOP Hearings following Acquittal or Dismissal (Daisy Kates)** - If a probationer's or parolee's new charge has been dismissed or they have been acquitted, ADAs may not pursue the violation hearing without supervisory approval.

IV. **Technical Violations**

A. ADAs may not recommend prison or jail time for technical violations arising from missed appointments, failed drug tests, or drug or alcohol use while in treatment. ADAs must recommend continued probation with access to services for all technical violations that do not pose an immediate threat to public safety.

B. ADAs must inquire about the reasons for the defendant's technical violation(s).

C. ADAs must, whenever possible, recommend services and supports to reduce infractions.

D. **Violations of Reporting Requirements** - Where the violation arises from responsibilities for a job, child-care, elder-care, or lack of funds for transportation, ADAs should recommend a change in the reporting requirements, to include telephone or zoom reporting, and less frequent reporting.

V. **Data Collection** - All employees of the DAO shall assist in data collection related to this policy to ensure that it is implemented and is effective, and to help assess its impact on mass supervision and racial disparities to the extent practicable. Units shall work with IT to create mechanisms to track this policy to the extent practicable. The DATA Lab shall use the data compiled to report on the policy's fidelity, efficacy, and impact on a regular basis.

ADDENDUM

Parole and Probation supervision is a major driver of mass incarceration. While the stated goal of more intense supervision for long periods is to increase safety, unnecessarily lengthy supervision routinely increases technical violations without producing meaningful public safety benefits. The impact of long periods of supervision and the attendant increased violations is particularly dire for black men in the criminal justice system. This is felt acutely in Philadelphia, which has the highest rate of supervision among large cities in the United States. In contrast, shorter, tailored supervision sentences with opportunities for early termination mitigate system-wide costs and harm while advancing the benefits of supervision. These policies are Part III of the DAO's continued effort to end mass supervision, reduce discrimination and bring balance back to sentencing.

Current Probation Conditions:

42 Pa.C.S. § 9763

(b) Conditions generally:

The court may attach any of the following conditions upon the defendant as it deems necessary:

- (1) [Deleted by 2019 Amendment.]*
- (2) To be devoted to a specific occupation, employment or education initiative*
- (3) To participate in a public or nonprofit community service program.*
- (4) To undergo individual or family counseling.*
- (5) To undergo available medical or psychiatric treatment or to enter and remain in a specified institution, when required for that purpose.*
- (6) To attend educational or vocational training programs.*
- (7) To attend or reside in a rehabilitative facility or other intermediate punishment program.*
- (8) [Deleted by 2019 Amendment.]*
- (9) To not possess a firearm or other dangerous weapon unless granted written permission.*
- (10) To make restitution of the fruits of the crime or to make reparations, in an affordable amount and on a schedule that the defendant can afford to pay, for the loss or damage caused by the crime.*
- (11) To be subject to intensive supervision while remaining within the jurisdiction of the court and to notify the court or designated person of any change in address or employment.*
- (12) To report as directed to the court or the designated person and to permit the designated person to visit the defendant's home.*
- (13) To pay a fine.*
- (14) To participate in drug or alcohol screening and treatment programs, including outpatient programs.*
- (15) To do other things reasonably related to rehabilitation.*
- (16) [Deleted by 2019 Amendment.]*
- (17) [Deleted by 2019 Amendment.]*

(c) Restrictive DUI probation conditions.—

- (1) Any person receiving a penalty imposed pursuant to 75 Pa.C.S. § 1543(b) (relating*

to driving while operating privilege is suspended or revoked), former 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance) or 75 Pa.C.S. § 3804 (relating to penalties) for a first, second or third offense under 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol or utilizing drugs) may only have probation imposed after undergoing an assessment under 75 Pa.C.S. § 3814 (relating to drug and alcohol assessments).

(2) If the defendant is determined to be in need of drug and alcohol treatment, the defendant may only have probation that includes participation in drug and alcohol treatment under 75 Pa.C.S. § 3815(c) (relating to mandatory sentencing). The defendant shall have restrictive DUI probation conditions of: (i) a residential inpatient program or a residential rehabilitative center; (ii) house arrest with electronic surveillance; (iii) a partial confinement program such as work release, work camp and halfway facility; or (iv) any combination of the programs set forth in this paragraph.

(3) If the defendant is determined not to be in need of drug and alcohol treatment, the defendant shall have restrictive DUI probation conditions of:

(i) house arrest with electronic surveillance;

(ii) partial confinement programs such as work release, work camps and halfway facilities; or (iii) any combination of the programs set forth in this paragraph.

(4) If the defendant is determined to be in need of additional treatment under 75 Pa.C.S. § 3814(2), the judge shall impose a minimum sentence as provided by law and a maximum sentence equal to the statutorily available maximum.

(d) Restrictive conditions of probation.—

Probation may include restrictive conditions that:

(1) house the person full time or part time, including inpatient treatment; or

(2) significantly restrict the person's movement and monitor the person's compliance with the program, including electronic monitoring or home confinement.

42 Pa.C.S. § 9763

SOURCES

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Philadelphia DAO Policy Regarding Fentanyl Test Strips



Effective Date: 1/29/21

As of this date, the District Attorney has announced a new policy regarding arrests and/or pending cases involving fentanyl testing strips: The goal is to promote a public health approach to prevention in regards to substance use. Fentanyl test strips empower people to use drugs more safely, reducing harms for people who use drugs, their families, and communities.

Like nearly all other policies, it creates a presumption for all DAO staff to follow. Acting contrary to this presumption requires approval of the District Attorney or a First Assistant District Attorney. Any staff member who believes there is good reason in a particular case to act contrary to the presumption is welcome to seek their approval after advising their supervisor.

CHARGING

Mere possession of fentanyl testing strips shall be declined for charging. If the case involves no other charge, the entire case should be declined. If the case involves other charges, proceed on the other charges.

PROSECUTIONS

For all pending cases in which mere possession of fentanyl test strips is charged, that charge shall be withdrawn no later than the next court listing. If the case involves no other charge, the entire case should be withdrawn. If the case involves other charges, proceed on the other charges.

This policy is consistent with the research on the public health benefits of fentanyl test strips for people who use drugs, and with other thoughtful jurisdictions' efforts to prevent fatal overdoses and to reduce harm from America's overdose crisis.